

# Restitution Guide

State of California



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## GUIDE HIGHLIGHTS

Senate Bill 2021 (Chapter 451, Statutes of 1998), Senate Bill 1768 (Chapter 587, Statutes of 1998) and Senate Bill 1608 (Chapter 201, Statutes of 1998) made several important changes to the restitution statutes. The majority of substantive changes affect juvenile restitution obligations. Specifically, this 6th Edition of the Restitution Guide reflects the following legislative changes:

- For juvenile offenders, changes the wording for the reduction or waiver of restitution orders from a “clear and compelling” standard to one of “compelling and extraordinary”.
- Clarifies that a minor’s “inability to pay” shall not be considered when determining the amount of a restitution order and that “inability to pay” cannot be considered a compelling or extraordinary reason not to impose a restitution order.
- Expressly grants minors the right to a restitution hearing to dispute the amount of a restitution order.
- Authorizes the court to modify a restitution order, imposed on a minor, on its own motion or on the motion of other parties. Requires that the victim be notified of the hearing on any such motion.
- Clarifies provisions governing joint and several liability for juvenile restitution obligations between a minor and his or her parent/guardian and places the burden of showing an inability to pay on the parent/guardian.
- Adds § 1202.41 to the Pen. Code, which creates a 4 year pilot program in the counties of Sacramento, San Diego and Alameda to amend restitution orders. This pilot program will be a collaborative effort with the SBOC and the Judicial Council.
- Clarifies provisions governing the disbursement of restitution order money collected from California Department of Corrections inmates and California Youth Authority wards
- Expressly prohibits a court from waiving or reducing an offender’s restitution obligations for purposes of allowing the parolee or inmate to leave the state with an unsatisfied restitution order or restitution fine.

As in prior editions of the Restitution Guide, this Guide has been divided into sections that can be referenced based upon the date of the offense. Please note, the last section of the Restitution Guide contains a listing of pertinent restitution case law by subject matter.

## REVENUE RECOVERY AND COMPLIANCE DIVISION

One of the divisions within the State Board of Control (SBOC) is the Revenue Recovery and Compliance Division (RRCD). The mission of RRCD is to serve victims of crime in California by maintaining the integrity of the Restitution Fund (Fund). This is accomplished by tracking, monitoring, and collecting monies owed the Fund.

The SBOC has been actively involved in outreach efforts to encourage the criminal justice community to consistently impose and collect restitution fines and orders. A majority of the activities in this area concern providing direction and clarity regarding restitution statutes so that the criminal justice and victims' communities may work together to safeguard the restitution rights of victims and hold offenders accountable for their actions.

The RRCD staff is available to you to answer your questions about restitution. If you have any questions, please contact the Restitution Analysts at the phone numbers below:

### Deputy Executive Director

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### Restitution Managers

Chip Skinner	(916) 324-8313
Maureen Dumas	(916) 327-0345

### Restitution Analysts

Gina Miller	(916) 322-2484
Lehua Kalanui-Tonra	(916) 323-6868
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### Chief Counsel

Catherine Close	(916) 327-1998
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Our Website address is:

[www.boc.cahwnet.gov](http://www.boc.cahwnet.gov)

**Additional copies of this or previous guides can be obtained by contacting one of the restitution analysts.**

## **ARTICLE I, SECTION 28 OF THE CALIFORNIA CONSTITUTION**

(b) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

## **RESTITUTION LAWS**

### ***EX POST FACTO* CONSIDERATIONS**

**NOTE:** Restitution statutes have been amended numerous times in recent years. Retroactive application of statutory amendments increasing the “punishment” imposed violate ex post facto provisions of the federal and state constitutions. Restitution fines, and in some cases restitution orders, have been held to be forms of punishment for purposes of ex post facto analysis. Please refer to both current statutes and the applicable restitution statutes as they existed at the time of the offense in question.

# RESTITUTION LAWS EFFECTIVE SEPTEMBER 14, 1998\*

## ADULT CONVICTIONS

### Quick Reference Box

Order a restitution fine of not less than \$200 and not more than \$10,000 for a felony conviction, and not less than \$100 and not more than \$1,000 for a misdemeanor conviction. The fine may be waived only for compelling and extraordinary reasons and the reasons must be stated on the record. If the sentence includes a period of parole, order a second restitution fine (suspended unless parole is revoked).

Order restitution to the victim(s) for the full amount of economic losses. The order may be less than the losses only if the court finds compelling and extraordinary reasons and the reasons must be stated on the record.

Restitution payments must be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program.

### Detailed Information

#### Fine Amount

- The court shall order a restitution fine of not less than **\$200** and not more than **\$10,000** if the offender is convicted of a felony, and not less than **\$100** and not more than **\$1,000** if the offender is convicted of a misdemeanor. Pen. Code § 1202.4(b)(1).
- If the sentence includes a period of parole, the court shall order an additional restitution fine in the same amount as assessed under Pen. Code § 1202.4(b). The fine shall be suspended unless parole is revoked. Pen. Code § 1202.45.

#### Inability to Pay the Restitution Fine

- The **minimum** fine shall be ordered regardless of the offender's inability to pay. Pen. Code § 1202.4(c).
- In setting a fine in excess of the minimum, **the offender** shall bear the burden of demonstrating an inability to pay. Pen. Code § 1202.4(d).

\* Note: This section incorporates all legislative changes made during the 1997-1998 Regular Legislative Session, including those changes effective January 1, 1999. It should be noted that the only change to adult restitution provisions was a removal of a reference to Pen. Code § 1214 from Pen. Code § 1202.4 (a)(3)(B) and (i). In all other respects, the laws governing imposition of restitution in adult cases remained unchanged.



- The court shall consider any relevant factors when setting the amount of the fine including the **seriousness and gravity of the offense**, any economic gain by the offender, and the extent to which any other person suffered losses as a result of the crime. Pen. Code § 1202.4(d).
- **Express findings** by the court concerning the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine is not required. Pen. Code § 1202.4(d).

### **Restitution Fine Formula**

- In felony cases, the court may use the following formula in setting a restitution fine in excess of the \$200 minimum. Pen. Code § 1202.4(b)(2):

**\$200 x number of years of imprisonment x number of felony counts  
of which the offender is convicted**

### **Restitution Fine Waiver**

- A restitution fine may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the record. Pen. Code § 1202.4(c).
- The offender's inability to pay is **not** a compelling and extraordinary reason for waiving a restitution fine. Pen. Code § 1202.4(c).

### **Restitution Order**

- The court must award restitution to the victim(s) in the full amount of economic losses. Pen. Code § 1202.4(f)(3). If the conviction is for a felony violation of Section 288, the court may order restitution for noneconomic losses including, but not limited to, psychological harm. Pen. Code § 1202.4(f)(3)(E).
- An offender has a right to a hearing before a judge to dispute the determination made regarding the amount of restitution. Pen. Code § 1202.4(f)(1).
- If the amount of the losses cannot be determined at sentencing, the court must order restitution in an amount "to be determined". Pen. Code § 1202.4(f).

### **Waiving Restitution Orders**

- The court shall order full restitution unless it finds **compelling and extraordinary** reasons for not doing so. The court **must state these reasons** on the record. Pen. Code § 1202.4(f) and (g).

- An offender's inability to pay is not a compelling and extraordinary reason for waiving or reducing a restitution order. Pen. Code § 1202.4(g).

**Payments Made by Victims of Crime Program.** Restitution order payments shall be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Pen. Code § 1202.4(f)(2).

# RESTITUTION LAWS EFFECTIVE SEPTEMBER 14, 1998

## JUVENILE DISPOSITIONS

### Quick Reference Box

When a minor is found to be a ward of the court as a result of committing a criminal offense, the court shall impose a restitution fine of not less than \$100 and not more than \$1,000 for a felony offense, and not more than \$100 for a misdemeanor offense. The fine may be waived only for compelling and extraordinary reasons and the reasons must be stated on the record.

Order restitution to the victim(s) for the full amount of economic losses. An order may be for less than the total amount of losses only if the court finds compelling and extraordinary reasons and the reasons must be stated on the record.

The minor's parent(s) or guardian(s) may be jointly and severally liable with the minor for the payment of restitution, fines, and penalty assessments.

Restitution payments must be forwarded to the Restitution Fund to the extent a victim has received assistance from the Victims of Crime Program.

### Detailed Information

#### Fine Amount

- The court shall impose a restitution fine of not less than **\$100** and not more than **\$1,000** if a juvenile is found to be a ward of the court by reason of the commission of one or more felonies. The court shall impose a restitution fine of not more than **\$100** if a juvenile is found to be a ward of the court by reason of the commission of one or more misdemeanors. Welf. & Inst. Code § 730.6(b)(1).

#### Ability to Pay the Restitution Fine

- The **minimum** fine shall be ordered regardless of the minor's inability to pay. Welf. & Inst. Code § 730.6(c).
- In setting a fine in excess of the minimum, **the minor** shall bear the burden of demonstrating a lack of ability to pay. Welf. & Inst. Code § 730.6(d)(2).
- Consideration of the minor's ability to pay may include his or her **future earning** capacity. Welf. & Inst. Code § 730.6(d)(2).

- The court shall consider any relevant factors when setting the amount of the fine including the **seriousness and gravity of the offense**, any economic gain by the minor, and the extent to which others suffered losses as a result of the offense. Welf. & Inst. Code § 730.6(d)(1).
- **Express findings** by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine is not required. Welf. & Inst. Code § 730.6(b)(1),(b)(2), and (e).

### **Restitution Fine Waiver**

- A felony restitution fine may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the court record. Welf. & Inst. Code § 730.6(g).

### **Restitution Order**

- The court must award restitution to the victim(s) in the full amount of economic losses. Welf. & Inst. Code § 730.6(h).
- The minor has a right to a hearing before a judge to dispute the determination made regarding the amount of restitution. Welf. & Inst. Code § 730.6(h)(4).

### **Waiving Restitution Orders**

- The court shall order full restitution unless it finds **compelling and extraordinary** reasons for not doing so. The court **must state these reasons** on the record. Welf. & Inst. Code § 730.6(h).
- A minor's inability to pay is not a compelling and extraordinary reason for waiving nor reducing a restitution order. Welf. & Inst. Code § 730.6(h).

**Payments Made by Victims of Crime Program.** Restitution order payments shall be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Welf. & Inst. Code § 730.6(i).

### **Parent/Guardian Liability**

A parent or guardian who has joint or sole legal and physical custody and control of the minor shall be rebuttably presumed to be jointly and severally liable for the amount of restitution, fines, and penalty assessments subject to the limits in Civil Code §§ 1714.1 and 1714.3 and subject to the parent's or guardian's inability to pay. Welf. & Inst. Code § 730.7(a)

When considering the parent's or guardian's inability to pay, the court may consider future earning capacity, present income, the number of persons dependent on that income, and the necessary obligations of the family, including, but not limited to, rent or mortgage payments, food, children's school tuition, children's clothing, medical bills, and health insurance. The parent or guardian has the burden of showing an inability to pay. Welf. & Inst. Code § 730.7(a).

# RESTITUTION LAWS EFFECTIVE SEPTEMBER 14, 1998

## OFFENDER PLACED IN DIVERSION PROGRAM Quick Reference Box

Order a diversion restitution fee of not less than \$100 and not more than \$1,000.
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### Detailed Information

#### Fee Amount

- The court shall order a diversion restitution fee of not less than **\$100** and not more than **\$1,000** for adult offenders. Pen. Code § 1001.90(b).
- The fee shall not be imposed upon persons whose case is diverted by the court per Chapter 2.8 (commencing with Pen. Code § 1001.20) (diversion of mentally retarded offenders).

#### Ability to Pay Diversion Restitution Fee

- The diversion restitution fee shall be ordered regardless of an offender's present ability to pay. Pen. Code § 1001.90(c).
- In setting a fee in excess of the minimum, **the offender** shall bear the burden of demonstrating a lack of ability to pay. Pen. Code § 1001.90(d).
- Consideration of an offender's ability to pay may include his or her **future earning** capacity. Pen. Code § 1001.90(d).
- The court shall consider any relevant factors when setting the amount of the fee including the **seriousness and gravity of the offense**, any economic gain by the offender, and the extent to which any other person suffered losses as a result of the crime. Pen. Code § 1001.90(d).
- **Express findings** by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the fee is not required. Pen. Code § 1001.90(d).

#### Waiver of Diversion Fee

- The diversion restitution fee may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the record. Pen. Code § 1001.90(c).

# RESTITUTION LAWS EFFECTIVE SEPTEMBER 14, 1998

## ADDITIONAL RESTITUTION INFORMATION

### THE STATE OF CALIFORNIA'S LIEN RIGHTS - RESTITUTION ORDERS

When a victim has received assistance from the Victims of Crime Program and an order of restitution to the victim is imposed as part of the sentence, the order is payable to the Restitution Fund to the extent the Victims of Crime Program has provided assistance. Pen. Code § 1202.4(f)(2) and Welf. & Inst. Code § 730.6(i). In addition, the State of California may have lien rights on the victim's recovery from the offender or a third party. Gov. Code § 13966.01.

An order of restitution should not be denied to a victim because he/she has received assistance from the Victims of Crime Program. To deny restitution for these reasons is to subsidize the offender's injury of the victim with money intended to assist victims.

### RESTITUTION FINES AND ORDERS AS A CONDITION OF PROBATION

If the court grants probation to the offender, the court shall make the payment of the restitution fine and the restitution order a condition of probation. Pen. Code § 1202.4(m) and Welf. & Inst. Code § 730.6(l). However, granting the offender probation does not alter the manner of imposition nor the enforceability of restitution fines and orders.

### RESTITUTION HEARINGS

**Restitution Fine.** An offender is NOT entitled to a separate hearing to determine or contest the amount of a restitution fine. Pen. Code § 1202.4(d) and Welf. & Inst. Code § 730.6(b)(1), (b)(2).

**Restitution Order.** In every case where a victim suffers economic loss and the court orders restitution **to the victim**, the offender is entitled to a hearing to determine or contest the amount of the order. Pen. Code § 1202.4(f)(1) and Welf. & Inst. Code § 730.6(h)(4).

**In order to be enforceable, a restitution fine or order must be specific - it must identify each victim and establish the amount of each obligation. Please note: if a victim's losses cannot be ascertained at the time of sentencing, the restitution shall be ordered in an amount "to be determined." Pen. Code § 1202.4(f). A "to be determined" restitution order is valid, but not enforceable until a specific amount is entered on the record.**

## **LIFE OF A RESTITUTION FINE/ORDER - ENFORCEMENT**

**Restitution Fine.** Restitution fines may be enforced in the same manner as money judgments generally. Pen. Code § 1214(a) and Welf. & Inst. § 730.6(r). Restitution fines are not subject to the ten-year limit for enforcement. Pen. Code § 1214(c).

**Restitution Order.** An order of restitution to a victim is enforceable as a civil judgment. Pen. Code § 1202.4(a)(3)(B),(i), and Welf. & Inst. § 730.6(i). However, to be enforceable the offender must be informed of his/her right to have a judge determine the amount of the restitution ordered and the offender must waive a hearing, stipulate to the amount, or be provided a hearing. Pen. Code § 1214(b).

## **STAY OF RESTITUTION FINE**

Under prior law, the court could stay the payment of the restitution fine if the offender was granted probation. The stay would become permanent upon the successful completion of probation. Assembly Bill 817 (Chapter 313, Statutes of 1995) eliminated this provision effective August 3, 1995, therefore the court may not stay the restitution fine in any case.

## **WAIVER OF RESTITUTION FINE**

The court may waive imposition of the restitution fine only if it finds **compelling and extraordinary** reasons for doing so. These reasons must be stated on the record. Pen. Code § 1202.4(c) and Welf. & Inst. § 730.6(g). The offender's inability to pay the restitution fine is not a compelling and extraordinary reason. Pen. Code § 1202.4(c) and Welf. & Inst. § 730.6(h).

## **PLEA BARGAINS**

Offenders must be advised of the possible imposition of a restitution fine and restitution to the victim as a consequence of a plea bargain. A case that is plea bargained to a lesser charge is not excluded from the imposition of a restitution fine or order and does not constitute a "compelling and extraordinary reason" for waiver of either the restitution fine or restitution order. *People v. Valdez* (1994) 24 Cal. App. 4<sup>th</sup> 1194 [30 Cal.Rptr.2d 4]

Payment of restitution for losses relating to dismissed counts may be ordered as a condition of the plea so long as the plea is freely and voluntarily made, there is factual basis for the plea, and the plea and all conditions are approved by the court. Pen. Code § 1192.3(a).

If restitution imposed is attributable to a count dismissed pursuant to a plea bargain, the court shall obtain a waiver pursuant to *People v. Harvey* (1979) 25 Cal. 3d 754 from the defendant as to the dismissed count. Pen. Code § 1192.3(b).



## **WHERE TO OBTAIN VICTIM LOSS INFORMATION**

Victim loss information can be obtained from your local Victim/Witness Assistance Center, the Victims of Crime Program, or the Revenue Recovery and Compliance Division (RRCD) (for those victims who have filed claims for assistance). The telephone numbers of the (RRCD) Restitution Analysts appear on page 2 of this guide.

## **NON-PAYMENT OF A RESTITUTION FINE OR ORDER**

Non-payment of a restitution fine or a restitution order imposed as a condition of probation may be punished by either a modification of the conditions of probation, or, if there is willful non-payment by revocation of probation. Pen. Code §§ 1203.1(j), 1203.2(a), 1214.2(b)(1) and Welf. & Inst. Code § 730.6 (m).

## **PAYMENT OF CERTAIN COSTS**

The court may, with certain exceptions, order the offender to pay certain costs not associated with restitution. These costs include the costs of probation (Pen. Code § 1203.1b), incarceration costs (Pen. Code § 1203.1c), parole supervision costs (Pen. Code § 1203.1e), and imprisonment costs (Pen. Code § 1203.1m). The court is required to establish the amount of the restitution fine and/or order **before** determining the amount to impose on the offender for the payment of these other costs. Pen. Code § 1203.1d. The law generally requires the court to consider the offender's ability to pay these other costs, taking into account the amount of the restitution fine and/or order already imposed on the offender.

## **MAINTAINING EMPLOYMENT TO PAY RESTITUTION**

When an offender is convicted of sexual assault of a minor in violation of Pen. Code § 11165.1(a) or (b), the court shall require as a condition of probation that the offender seek and maintain employment and apply a portion of his/her earnings as determined by the court to the payment of restitution for medical or psychological treatment expenses. Pen. Code § 1203.1g. This provision also applies in cases of assault, battery, or assault with a deadly weapon on a victim 65 years of age or older. In the latter case, the offender must have known or reasonably should have known that the victim was age 65 or older. Pen. Code § 1203.1j.

## **INTEREST**

There are two provisions governing the accrual of interest on restitution orders. The first is Pen. Code § 1202.4(f)(3)(F), which provides that interest accrues at the rate of 10% per annum from the date of sentencing, or loss, as determined by the court. The second provision is found in Pen. Code § 1214.5, which provides that an order of restitution imposed as a condition of probation may bear interest if the order exceeds \$50.00 and the court determines the offender has the ability to pay.

The interest would be at a rate of 10% per annum and accrues from the date of the order on the outstanding principal amount. If the restitution is imposed in installments, the interest accrues from the date the installment comes due. Pen. Code § 1214.5.

### **DEFINITION OF VICTIM**

The court may order restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime. Pen. Code § 1202.4(k) and Welf. & Inst. § 730.6(k).

### **COMMUNITY SERVICE IN LIEU OF FINES**

If the court imposes community service as an alternative to a fine, it must specify the amount of fine and the number of hours of community service in the court order. Pen. Code § 1205.3. Further, this section applies to all fines, not just restitution fines. Therefore, if the court elects to impose community service instead of a fine, it should do so for all fines. The court should not grant community service in place of a restitution fine while at the same time ordering the offender to pay other fines.

### **ESTABLISHING ACCOUNTS**

Probation officers must establish an account within 30 days of an order for restitution to a victim or the Restitution Fund into which restitution payments that are not deposited into the Restitution Fund can be deposited. Pen. Code § 1202.8.

### **BENCH WARRANTS**

The court shall issue a bench warrant for the arrest of an offender who defaults on his or her payment of restitution obligations imposed as a condition of probation. Pen. Code § 1205(b). This provision shall apply only if the offender has also defaulted on the payment of other fines. Pen. Code § 1205(e).

### **CDC COLLECTIONS**

When a **prisoner** owes a restitution fine, restitution order, or both, CDC deducts 20 percent or the balance owing, whichever is less, on the fine and order from the wages and trust account deposits of a prisoner. CDC transfers the restitution fine amount to the SBOC for deposit in the Restitution Fund. Restitution order collections are also transferred to the SBOC. If the victim has received assistance from the Victims of Crime Program, the restitution collections are generally remitted to the Restitution Fund to the extent of the Program's payments. The SBOC sends any excess collections to the victim. If the victim has not received assistance from the Program, the SBOC forwards the restitution collections to the victim. However, restitution collections by CDC can only be forwarded to the victim if the victim has filed a request with CDC (Application for Collection and Disbursement of Direct Orders of Restitution Form). Any amounts deducted from the prisoner are credited against the amounts owing.

The CDC has statutory authority to deduct up to a maximum of 50 percent from the wages and trust account deposits of a prisoner. Pen. Code § 2085.5.

When a prisoner has both a restitution fine and a restitution order from the sentencing court, CDC collects the **restitution order first**. Pen. Code § 2085.5(g).

Any compensatory or punitive damages awarded by trial or settlement to a prisoner in connection with a civil action brought against any jail or correctional facility, shall be paid directly to satisfy any outstanding restitution orders or restitution fines against the prisoner. The balance of any award shall be forwarded to the prisoner after full payment of all outstanding restitution orders and restitution fines. Pen. Code § 2085(j).

The CDC will make all reasonable efforts to notify the victims concerning the pending payment of any compensatory or punitive damages. This applies to cases settled or awarded on or after April 26, 1996. Pen. Code § 2085(j).

### **CYA COLLECTIONS**

When a **juvenile ward** owes a restitution fine, restitution order, or both, imposed pursuant to Welf. & Inst. Code § 730.6, CYA deducts the balance owing on the fine and order from the trust account deposits of a ward. CYA transfers the restitution fine amount to the SBOC for deposit in the Restitution Fund. Restitution order collections will be directed to the victim to the extent that the victim has not received assistance from VOCP. If the victim has filed an application with the VOCP, CYA transfers the amount to the SBOC. Any amounts deducted from the ward are credited against the amounts owing. The CYA has statutory authority to deduct up to a maximum of 50 percent of the total amount held in trust. Welf. & Inst. Code § 1752.81(a),(b),(c).

When a ward has both a restitution fine and a restitution order from the sentencing court, CYA collects the **restitution order first**. Welf. & Inst. Code § 1752.81(f).

Any compensatory or punitive damages awarded by trial or settlement to a minor or adult committed to the CYA in connection with a civil action brought against any jail or correctional facility, shall be paid directly to satisfy any outstanding restitution orders or restitution fines against the minor or adult. The balance of any award will then be forwarded to the minor or adult committed to CYA after full payment of all outstanding restitution orders and restitution fines. Welf. & Inst. Code § 1752.81(d).

The CYA will make all reasonable efforts to notify the victims concerning the pending payment of any compensatory or punitive damages. This applies to cases settled or awarded on or after April 26, 1996. Welf. & Inst. Code § 1752.81(d).

## **PAROLEES LEAVING CALIFORNIA**

No parolee or inmate may be released on parole to reside in another state if the parolee or inmate has an unsatisfied restitution order or restitution fine. A parolee or inmate may be granted an exception to this prohibition if the parolee or inmate posts a bond for the amount of the restitution order. In addition, a parolee or inmate may petition the court for a hearing to determine whether, in the interests of justice, the prohibition should be waived. Pen. Code § 11177.2.

## **AMENDING RESTITUTION ORDERS**

A four-year pilot program was created for the purpose of collaborating with judges to amend restitution orders imposed pursuant to Pen. Code § 1202.4 and Welf. & Inst. Code § 730.6 to the extent that the victim has received assistance from the Victims of Crime Program. This pilot program, contained in Pen. Code § 1202.41, shall include restitution orders imposed by courts in the regional judicial assignments as determined by the Judicial Council, and Court Operation Services encompassing the Counties of **Sacramento, San Diego, and Alameda.**

# RESTITUTION LAWS EFFECTIVE JANUARY 1, 1997 – SEPTEMBER 13, 1998 ADULT CONVICTIONS

## Quick Reference Box

Order a restitution fine of not less than \$200 and not more than \$10,000 for a felony conviction, and not less than \$100 and not more than \$1,000 for a misdemeanor conviction. The fine may be waived only for compelling and extraordinary reasons and the reasons must be stated on the record. If the sentence includes a period of parole, order a second restitution fine (suspended unless parole is revoked).

Order restitution to the victim(s) for the full amount of economic losses. The order may be less than the losses only if the court finds compelling and extraordinary reasons and the reasons must be stated on the record.

Restitution payments must be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program.

## Detailed Information

### Fine Amount

- The court shall order a restitution fine of not less than **\$200** and not more than **\$10,000** if the offender is convicted of a felony, and not less than **\$100** and not more than **\$1,000** if the offender is convicted of a misdemeanor. Pen. Code § 1202.4(b)(1).
- If the sentence includes a period of parole, the court shall order an additional restitution fine in the same amount as assessed under Pen. Code § 1202.4(b)(1). The fine shall be suspended unless parole is revoked. Pen. Code § 1202.45.

### Inability to Pay the Restitution Fine

- The **minimum** fine shall be ordered regardless of the offender's inability to pay. Pen. Code § 1202.4(c).
- In setting a fine in excess of the minimum, **the offender** shall bear the burden of demonstrating an inability to pay. Pen. Code § 1202.4(d).
- Consideration of an offender's inability to pay may include the offender's **future earning** capacity. Pen. Code § 1202.4(d).

- The court shall consider any relevant factors when setting the amount of the fine including the **seriousness and gravity of the offense**, any economic gain by the offender, and the extent to which any other person suffered losses as a result of the crime. Pen. Code § 1202.4(d).
- **Express findings** by the court concerning the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine is not required. Pen. Code § 1202.4(d).

### **Restitution Fine Formula**

- In felony cases, the court may use the following formula in setting a restitution fine in excess of the \$200 minimum. Pen. Code § 1202.4(b)(2):

**\$200 x number of years of imprisonment x number of felony counts  
of which the offender is convicted**

### **Restitution Fine Waiver**

- A restitution fine may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the record. Pen. Code § 1202.4(c).
- The offender's inability to pay is **not** a compelling and extraordinary reason for waiving the restitution fine. Pen. Code § 1202.4(c).

### **Restitution Order**

- The court must award restitution to the victim(s) in the full amount of economic losses. If the conviction is for a felony violation of Section 288, the court may order restitution for noneconomic losses including, but not limited to, psychological harm. Pen. Code § 1202.4(f)(3)(E).
- An offender has a right to a hearing before a judge to dispute the determination made regarding the amount of restitution. Pen. Code § 1202.4(f)(1).
- If the amount of the losses cannot be determined at sentencing, the court must order restitution in an amount "to be determined". Pen. Code § 1202.4(f).

### **Waiving Restitution Orders**

- The court shall order full restitution unless it finds **compelling and extraordinary** reasons for not doing so. The court **must state these reasons** on the record. Pen. Code § 1202.4(f) and (g).

- An offender's inability to pay is not a compelling and extraordinary reason for waiving nor reducing a restitution order. Pen. Code § 1202.4(g)

**Payments Made by Victims of Crime Program.** Restitution order payments shall be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Pen. Code § 1202.4(f)(2).

# RESTITUTION LAWS EFFECTIVE JANUARY 1, 1997 – SEPTEMBER 13, 1998 JUVENILE DISPOSITIONS

## Quick Reference Box

When a minor is found to be a ward of the court as a result of committing a criminal offense, the court shall impose a restitution fine of not less than \$100 and not more than \$1,000 for a felony offense, and not more than \$100 for a misdemeanor offense. The fine may be waived only for compelling and extraordinary reasons and the reasons must be stated on the record.

Order restitution to the victim(s) for the full amount of economic losses. An order may be for less than the total amount of losses only if the court finds clear and compelling reasons and the reasons must be stated on the record.

The minor's parent(s) or guardian(s) may be jointly and severally liable with the minor for the payment of restitution, fines, and penalty assessments.

Restitution payments must be forwarded to the Restitution Fund to the extent a victim has received assistance from the Victims of Crime Program.

## Detailed Information

### Fine Amount

- The court shall impose a restitution fine of not less than **\$100** and not more than **\$1,000** if a juvenile is found to be a ward of the court by reason of the commission of one or more felonies. The court shall impose a restitution fine of not more than **\$100** if a juvenile is found to be a ward of the court by reason of the commission of one or more misdemeanors. Welf. & Inst. Code § 730.6(b)(1).

### Ability to Pay the Restitution Fine

- The **minimum** fine shall be ordered regardless of the minor's present ability to pay. Welf. & Inst. Code § 730.6(c).
- In setting a fine in excess of the minimum, **the minor** shall bear the burden of demonstrating a lack of ability to pay. Welf. & Inst. Code § 730.6(d)(2).
- Consideration of the minor's ability to pay may include his or her **future earning** capacity. Welf. & Inst. Code § 730.6(d)(2).



- The court shall consider any relevant factors when setting the amount of the fine including the **seriousness and gravity of the offense**, any economic gain by the minor, and the extent to which others suffered losses as a result of the offense. Welf. & Inst. Code § 730.6(d)(1).
- **Express findings** by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine is not required. Welf. & Inst. Code § 730.6(b)(1) and (e).

### **Restitution Fine Waiver**

- A felony restitution fine may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the court record. Welf. & Inst. Code § 730.6(g).

### **Restitution Order**

- The court must award restitution to the victim(s) in the full amount of economic losses. Welf. & Inst. Code § 730.6(h).

### **Waiving Restitution Orders**

- The court shall order full restitution unless it finds **clear and compelling** reasons for not doing so. The court must state these reasons on the record. Welf. & Inst. Code § 730.6(h).

### **Parent/Guardian Liability**

A parent or guardian who has joint or sole legal and physical custody and control of the minor shall be rebuttably presumed to be jointly and severally liable for the amount of restitution, fines, and penalty assessments subject to the limits in Civil Code §§ 1714.1 and 1714.3 and subject to the parent's or guardian's ability to pay. The parent or guardian has the burden of showing a lack of ability to pay and the court may consider their future earning capacity. Welf. & Inst. Code § 730.7(a).

**RESTITUTION LAWS EFFECTIVE  
JANUARY 1, 1997 – SEPTEMBER 13, 1998  
OFFENDER PLACED IN DIVERSION PROGRAM  
Quick Reference Box**

<b>Order a diversion restitution fee of not less than \$100 and not more than \$1,000.</b>
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**Detailed Information**

**Fee Amount**

- The court shall order a diversion restitution fee of not less than **\$100** and not more than **\$1,000** for adult offenders. Pen. Code § 1001.90(b).
- The fee shall not be imposed upon persons whose case is diverted by the court per Chapter 2.8 (commencing with Pen. Code § 1001.20) (diversion of mentally retarded offenders).

**Ability to Pay Diversion Restitution Fee**

- The diversion restitution fee shall be ordered regardless of an offender's present ability to pay. Pen. Code § 1001.90(c).
- In setting a fee in excess of the minimum, **the offender** shall bear the burden of demonstrating a lack of ability to pay. Pen. Code § 1001.90(d).
- Consideration of an offender's ability to pay may include his or her **future earning** capacity. Pen. Code § 1001.90(d).
- The court shall consider any relevant factors when setting the amount of the fee including the **seriousness and gravity of the offense**, any economic gain by the offender, and the extent to which any other person suffered losses as a result of the crime. Pen. Code § 1001.90(d).
- **Express findings** by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the fee is not required. Pen. Code § 1001.90(d).

**Waiver of Diversion Fee**

- The diversion restitution fee may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the record. Pen. Code § 1001.90(c).
- The diversion restitution fee shall be ordered regardless of the defendant's present ability to pay. Pen. Code § 1001.90(c).

# **RESTITUTION LAWS EFFECTIVE JANUARY 1, 1997 – SEPTEMBER 13, 1998**

## **ADDITIONAL RESTITUTION INFORMATION**

### **THE STATE OF CALIFORNIA'S LIEN RIGHTS - RESTITUTION ORDERS**

When a victim has received assistance from the Victims of Crime Program and an order of restitution to the victim is imposed as part of the sentence, the order is payable to the Restitution Fund to the extent the Victims of Crime Program has provided assistance. Pen. Code § 1202.4(f)(2). In addition, the State of California may have lien rights on the victim's recovery from the offender or a third party. Gov. Code § 13966.01.

An order of restitution should not be denied to a victim because he/she has received assistance from the Victims of Crime Program. To deny restitution for these reasons is to subsidize the offender's injury of the victim with money intended to assist victims.

### **RESTITUTION FINES AND ORDERS AS A CONDITION OF PROBATION**

If the court grants probation to the offender, the court shall make the payment of the restitution fine and the restitution order a condition of probation. Pen. Code § 1202.4(m). However, granting the offender probation does not alter the manner of imposition nor the enforceability of restitution fines and orders.

### **RESTITUTION HEARINGS**

**Restitution Fine.** An offender is NOT entitled to a separate hearing to determine or contest the amount of a restitution fine. Pen. Code § 1202.4(d) and Welf. & Inst. Code § 730.6(b)(1).

**Restitution Order.** In every case where a victim suffers economic loss and the court orders restitution **to the victim**, the offender is entitled to a hearing to determine or contest the amount of the order. Pen. Code § 1202.4(f)(1).

**In order to be enforceable, a restitution fine or order must be specific - it must identify each victim and establish the amount of each obligation. Please note: if a victim's losses cannot be ascertained at the time of sentencing, the restitution shall be ordered in an amount "to be determined." Pen. Code § 1202.4(f). A "to be determined" restitution order is valid, but not enforceable until a specific amount is entered on the record.**

## **LIFE OF A RESTITUTION FINE/ORDER - ENFORCEMENT**

**Restitution Fine.** Restitution fines may be enforced in the same manner as money judgments generally. Pen. Code § 1214(a). Restitution fines are not subject to the ten-year limit for enforcement. Pen. Code § 1214(c).

**Restitution Order.** An order of restitution to a victim is enforceable as a civil judgment. Pen. Code 1202.4(i) and Welf. & Inst. § 730.6(i). However, to be enforceable the offender must be informed of his/her right to have a judge determine the amount of the restitution ordered and the offender must waive a hearing, stipulate to the amount, or be provided a hearing. Pen. Code § 1214(b).

## **STAY OF RESTITUTION FINE**

Under previous law, the court could stay the payment of the restitution fine if the offender was granted probation. The stay would become permanent upon the successful completion of probation. Assembly Bill 817, Chapter 313, (Statutes of 1995) eliminated this provision effective August 3, 1995, therefore the court may not stay the restitution fine in any case.

## **WAIVER OF RESTITUTION FINE**

The court may waive imposition of the restitution fine only if it finds **compelling and extraordinary** reasons for doing so. Pen. Code § 1202.4(c) and Welf. & Inst. § 730.6(g). These reasons must be stated on the record. The offender's inability to pay the restitution fine is not a compelling and extraordinary reason. Pen. Code § 1202.4(c).

## **PLEA BARGAINS**

Offenders must be advised of the possible imposition of a restitution fine and restitution to the victim as a consequence of a plea bargain. A case that is plea bargained to a lesser charge is not excluded from the imposition of a restitution fine or order and does not constitute a "compelling and extraordinary reason" for waiver of either the restitution fine or restitution order.

Payment of restitution for losses relating to dismissed counts may be ordered as a condition of the plea so long as the plea is freely and voluntarily made, there is factual basis for the plea, and the plea and all conditions are approved by the court. Pen. Code § 1192.3(a).

If restitution is imposed which is attributable to a count dismissed pursuant to a plea bargain, the court shall obtain a waiver pursuant to *People v. Harvey* (1979) 25 Cal. 3d 754 from the defendant as to the dismissed count. Pen. Code § 1192.3(b)

## **WHERE TO OBTAIN VICTIM LOSS INFORMATION**

Victim loss information can be obtained from your local Victim/Witness Assistance Center, the Victims of Crime Program, or the Revenue Recovery and Compliance Division (RRCD) (for those victims who have filed claims for assistance). The telephone numbers of the (RRCD) Restitution Analysts appear earlier in this document in the section entitled "Revenue Recovery and Compliance Division".

## **NON-PAYMENT OF A RESTITUTION FINE OR ORDER**

Non-payment of a restitution fine or a restitution order imposed as a condition of probation may be punished by either a modification of the conditions of probation, or, if there is willful non-payment by revocation of probation. Pen. Code §§ 1203.1(j), 1203.2(a) and 1214.2(b)(1).

## **PAYMENT OF CERTAIN COSTS**

The court may, with certain exceptions, order the offender to pay certain costs not associated with restitution. These costs include the costs of probation (Pen. Code § 1203.1b), incarceration costs (Pen. Code § 1203.1c), parole supervision costs (Pen. Code § 1203.1e), and imprisonment costs (Pen. Code § 1203.1m). The court is required to establish the amount of the restitution fine and/or order **before** determining the amount to impose on the offender for the payment of these other costs. Pen. Code § 1203.1d. The law generally requires the court to consider the offender's ability to pay these other costs, taking into account the amount of the restitution fine and/or order already imposed on the offender.

## **MAINTAINING EMPLOYMENT TO PAY RESTITUTION**

When an offender is convicted of sexual assault of a minor in violation of Pen. Code § 11165.1(a) or (b), the court shall require as a condition of probation that the offender seek and maintain employment and apply a portion of his/her earnings as determined by the court to the payment of restitution for medical or psychological treatment expenses. Pen. Code § 1203.1g. This provision also applies in cases of assault, battery, or assault with a deadly weapon on a victim 65 years of age or older. In the latter case, the offender must have known or reasonably should have known that the victim was age 65 or older. Pen. Code § 1203.1j.

## **INTEREST**

There are two provisions governing the accrual of interest on restitution orders. The first is Pen. Code § 1202.4(f)(3)(F) which provides that interest accrues at the rate of 10% per annum from the date of sentencing, or loss, as determined by the court. The second provision is found in Pen. Code § 1214.5, which provides that an order of restitution imposed as a condition of probation may bear interest if the order exceeds \$50.00 and the court determines the offender has the ability to pay.

The interest would be at a rate of 10% per annum and accrues from the date of the order on the outstanding principal amount. If the restitution is imposed in installments, the interest accrues from the date the installment comes due. Pen. Code § 1214.5.

### **DEFINITION OF VICTIM**

The court may order restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime. Pen. Code § 1202.4(k) and Welf. & Inst. § 730.6(k).

### **COMMUNITY SERVICE IN LIEU OF FINES**

If the court imposes community service as an alternative to a fine, it must specify the amount of fine and the number of hours of community service in the court order. Pen. Code § 1205.3. Further, this section applies to all fines, not just restitution fines. Therefore, if the court elects to impose community service instead of a fine, it should do so for all fines. The court should not grant community service in place of a restitution fine while at the same time ordering the offender to pay other fines.

### **ESTABLISHING ACCOUNTS**

Probation officers must establish an account within 30 days of an order for restitution to a victim or the Restitution Fund into which restitution payments that are not deposited into the Restitution Fund can be deposited. Pen. Code § 1202.8.

### **BENCH WARRANTS**

The court shall issue a bench warrant for the arrest of an offender who defaults on his or her payment of restitution obligations imposed as a condition of probation. Pen. Code § 1205(b). This provision shall apply only if the offender has also defaulted on the payment of other fines. Pen. Code § 1205(e).

# RESTITUTION LAWS EFFECTIVE AUGUST 3, 1995 - DECEMBER 31, 1996 ADULT CONVICTIONS

## Quick Reference Box

Order a restitution fine of not less than \$200 and not more than \$10,000 for a felony conviction, and not less than \$100 and not more than \$1,000 for a misdemeanor conviction. The fine may be waived only for compelling and extraordinary reasons and the reasons must be stated on the record. If the sentence includes a period of parole, order a second restitution fine (suspended unless parole is revoked).

Order restitution to the victim(s) for the full amount of economic losses. The order may be less than the losses only if the court finds clear and compelling reasons and the reasons must be stated on the record.

Restitution payments must be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program.

## Detailed Information

### Fine Amount

- The court shall order a restitution fine of not less than **\$200** and not more than **\$10,000** if the offender is convicted of a felony, and not less than **\$100** and not more than **\$1,000** if the offender is convicted of a misdemeanor. Pen. Code § 1202.4(b).
- If the sentence includes a period of parole, the court shall order an additional restitution fine in the same amount as assessed under Pen. Code § 1202.4(b). The fine shall be suspended unless parole is revoked. Pen. Code § 1202.45.

### Ability to Pay the Restitution Fine

- The **minimum** fine shall be ordered regardless of the offender's present ability to pay. Pen. Code § 1202.4(c).
- In setting a fine in excess of the minimum, **the offender** shall bear the burden of demonstrating a lack of ability to pay. Pen. Code § 1202.4(d).
- Consideration of an offender's ability to pay may include the offender's **future earning** capacity. Pen. Code § 1202.4(d).

- The court shall consider any relevant factors when setting the amount of the fine including the **seriousness and gravity of the offense**, any economic gain by the offender, and the extent to which any other person suffered losses as a result of the crime. Pen. Code §1202.4(d).
- **Express findings** by the court concerning the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine is not required. Pen. Code §1202.4(d).

### **Restitution Fine Formula**

- In felony cases, the court may use the following formula in setting a restitution fine in excess of the \$200 minimum. Pen. Code § 1202.4(b):

**\$200 x number of years of imprisonment x number of felony counts  
of which the offender is convicted**

### **Restitution Fine Waiver**

- A restitution fine may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the court record. Pen. Code § 1202.4(c).

### **Restitution Order**

- The court must award restitution to the victim(s) in the full amount of economic losses. If the conviction is for a felony violation of Section 288, the court may order restitution for noneconomic losses including, but not limited to, psychological harm. Pen. Code § 1202.4(a)(3)(B), (g) and (i).
- An offender has a right to a hearing before a judge to dispute the determination made regarding the amount of restitution. Pen. Code §1202.4(j).

### **Waiving Restitution Orders**

- The court shall order full restitution unless it finds **clear and compelling** reasons for not doing so. The court **must state these reasons** on the record. Pen. Code § 1202.4(g).

### **Payments Made by Victims of Crime Program**

- **Restitution order payments shall be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Pen. Code § 1202.4(f).**



# RESTITUTION LAWS EFFECTIVE AUGUST 3, 1995 - DECEMBER 31, 1996 JUVENILE DISPOSITIONS

## Quick Reference Box

When a minor is found to be a ward of the court as a result of committing a criminal offense, the court shall impose a restitution fine of not less than \$100 and not more than \$1,000 for a felony offense, and not more than \$100 for a misdemeanor offense. The fine may be waived only for compelling and extraordinary reasons and the reasons must be stated on the record.

Order restitution to the victim(s) for the full amount of economic losses. An order may be for less than the total amount of losses only if the court finds clear and compelling reasons and the reasons must be stated on the record.

The minor's parent(s) or guardian(s) may be jointly and severally liable with the minor for the payment of restitution, fines, and penalty assessments.

Restitution payments must be forwarded to the Restitution Fund to the extent a victim has received assistance from the Victims of Crime Program.

## Detailed Information

### Fine Amount

- The court shall impose a restitution fine of not less than **\$100** and not more than **\$1,000** if a juvenile is found to be a ward of the court by reason of the commission of one or more felony offenses. The court shall order a restitution fine of not more than **\$100** if a juvenile is found to be a ward of the court by reason of the commission of one or more misdemeanors. Welf. & Inst. Code § 730.6(b)(2).

### Ability to Pay the Restitution Fine

- The **minimum** fine shall be ordered regardless of the minor's present ability to pay. Welf. & Inst. Code § 730.6(c).
- In setting a fine in excess of the minimum, **the minor** shall bear the burden of demonstrating a lack of ability to pay. Welf. & Inst. Code § 730.6(d)(2).
- Consideration of the minor's ability to pay may include his or her **future earning** capacity. Welf. & Inst. Code § 730.6(d)(2).

- The court shall consider any relevant factors when setting the amount of the fine including the **seriousness and gravity of the offense**, any economic gain by the minor, and the extent to which others suffered losses as a result of the offense. Welf. & Inst. Code § 730.6(d)(1).
- **Express findings** by the court as to the factors bearing on the amount of the fine shall not be required. Welf. & Inst. Code § 730.6(e).

### **Restitution Fine Waiver**

- A felony restitution fine may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the record. Welf. & Inst. Code § 730.6(g).

### **Restitution Order**

- The court must award restitution to the victim in the full amount of economic losses. Welf. & Inst. Code § 730.6(h).

### **Waiving Restitution Orders**

- The court shall order full restitution unless it finds **clear and compelling** reasons for not doing so. The court must state these reasons on the record. Welf. & Inst. Code § 730.6(h).

### **Parent/Guardian Liability**

- A parent or guardian who has joint or sole legal and physical custody and control of the minor shall be rebuttably presumed to be jointly and severally liable for the amount of restitution, fines, and penalty assessments subject to the limits in Civil Code § 1714.1 and § 1714.3 and subject to the parent's or guardian's ability to pay. The parent or guardian has the burden of showing lack of ability to pay, and the court may consider their future earning capacity. Welf. & Inst. Code § 730.7(a).

**RESTITUTION LAWS EFFECTIVE  
AUGUST 3, 1995 - DECEMBER 31, 1996  
OFFENDER PLACED IN DIVERSION PROGRAM**

**Quick Reference Box**

<b>Order a diversion restitution fee of not less than \$100 and not more than \$1,000.</b>
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**Detailed Information**

**Fee Amount**

- The court shall order a diversion restitution fee of not less than **\$100** and not more than **\$1,000** for adult offenders. Pen. Code § 1001.90(b).
- The fee shall not be imposed upon persons whose case is diverted by the court per Chapter 2.8 (commencing with Pen. Code §1001.20) (diversion of mentally retarded offenders).

**Ability to Pay Diversion Restitution Fee**

- The diversion restitution fee shall be ordered regardless of the offender's present ability to pay. Pen. Code § 1001.90(c).
- In setting a fee in excess of the minimum, **the offender** shall bear the burden of demonstrating a lack of ability to pay. Pen. Code § 1001.90(d).
- Consideration of an offender's ability to pay may include his or her **future earning** capacity. Pen. Code § 1001.90(d).
- The court shall consider any relevant factors when setting the amount of the fee including the **seriousness and gravity of the offense**, any economic gain by the offender, and the extent to which any other person suffered losses as a result of the crime. Pen. Code § 1001.90(d).
- **Express findings** by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the fee is not required. Pen. Code § 1001.90(d).

**Waiver of Diversion Fee**

- The diversion restitution fee may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so. The **reasons must be stated** on the record. Pen. Code § 1001.90(c).

# **RESTITUTION LAWS EFFECTIVE AUGUST 3, 1995 - DECEMBER 31, 1996**

## **ADDITIONAL RESTITUTION INFORMATION**

### **THE STATE OF CALIFORNIA'S LIEN RIGHTS (RESTITUTION ORDERS)**

When a victim has received assistance from the Victims of Crime Program and an order of restitution to the victim is imposed as part of the sentence, the order is payable to the Restitution Fund to the extent the Victims of Crime Program has provided assistance. Pen. Code § 1202.4(f) for adult offenders. In addition, the State of California may have lien rights on the victim's recovery from the offender or a third party. Gov. Code § 13966.01.

An order of restitution should not be denied to a victim because he/she has received assistance from the Victims of Crime Program. To deny restitution for these reasons is to subsidize the offender's injury of the victim with money intended to assist victims.

### **RESTITUTION FINES AND ORDERS AS A CONDITION OF PROBATION**

If the court grants probation to the offender, the court shall make payment of the restitution fine and the restitution order a condition of probation. Pen. Code § 1203.04(a)(2) and Welf. & Inst. Code § 730.6(l). However, granting the offender probation does not alter the manner of imposition or enforceability of the restitution fines and orders.

### **RESTITUTION HEARINGS**

**Restitution Fine.** An offender is NOT entitled to a separate hearing to determine or contest the amount of a restitution **fine**. Pen. Code 1202.4(d).

**Restitution Order.** In every case where a victim suffers economic loss and the court orders restitution to the victim, the offender is entitled to a hearing to dispute the amount of the order. Pen. Code § 1202.4(j).

**In order to be enforceable, a restitution fine or order must be specific. It must identify each victim and establish the amount of the obligation.**

### **LIFE OF A RESTITUTION FINE/ORDER - ENFORCEMENT**

**Restitution Fine.** Restitution fines may be enforced in the same manner as money judgments generally. Pen. Code § 1214(a). Restitution fines are not subject to the ten-year limit for enforcement. Pen. Code § 1214(c).

**Restitution Order.** An order of restitution to a victim under Pen. Code § 1202.4(f) is enforceable as a civil judgment. Pen. Code § 1202.4(h). However, to be enforceable, the offender must be informed of his/her right to have a judge determine the amount of the restitution ordered and the offender must waive a hearing, stipulate to the amount, or be provided a hearing. Pen. Code § 1214(b).

### **STAY OF RESTITUTION FINE**

Under previous law, the court could stay the payment of the restitution fine if the offender was granted probation. The stay would become permanent upon the successful completion of probation. Assembly Bill 817, Chapter 313, (Statutes of 1995) eliminated this provision effective August 3, 1995, therefore, the court may not stay the restitution fine in any case.

### **WAIVER OF RESTITUTION FINE**

The court may waive imposition of the restitution fine only if it finds **compelling and extraordinary** reasons for doing so. Pen. Code § 1202.4(c) and Welf. & Inst. Code § 730.6(g). These reasons must be stated on the court record.

### **PLEA BARGAINS**

Offenders must be advised of the possible imposition of a restitution fine and restitution to the victim as a consequence of a plea bargain. A case that is plea bargained to a lesser charge is not excluded from the imposition of a restitution fine or order and does not constitute a "compelling and extraordinary reason" for waiver of either the restitution fine or restitution order.

### **WHERE TO OBTAIN VICTIM LOSS INFORMATION**

Victim loss information can be obtained from your local Victim/Witness Assistance Center, the Victims of Crime Program, or the Revenue Recovery and Compliance Division (RRCD) (for those victims who have filed claims for assistance). The telephone numbers of the RRCD Restitution Analysts appear earlier in this document in the section entitled "Revenue Recovery and Compliance Division."

### **NON-PAYMENT OF A RESTITUTION FINE OR ORDER**

Non-payment of a restitution fine or a restitution order imposed as a condition of probation may be punished by either a modification of the conditions of probation or, if there is willful non-payment by revocation of probation. Pen. Code §§ 1203.1(j), 1203.2(a), and 1214.2(b)(1).

## **PAYMENT OF CERTAIN COSTS**

The court may, with certain exceptions, order the offender to pay certain costs not associated with restitution. These costs include the costs of probation (Pen. Code § 1203.1b), incarceration costs (Pen. Code § 1203.1c), parole supervision costs (Pen. Code § 1203.1e), and imprisonment costs (Pen. Code § 1203.1m). The courts are required to establish the amount of the restitution fine and/or order **before** determining the amount to impose on the offender for the payment of these other costs. Pen. Code § 1203.1d. The law generally requires the court to consider the offender's ability to pay these other costs, taking into account the amount of the restitution fine and/or order already imposed on the offender. Clearly, the law intends that the court first consider and order an appropriate restitution fine and order. Then, considering the restitution obligations along with other ability to pay factors, the court may order the offender to pay other costs.

## **MAINTAINING EMPLOYMENT TO PAY RESTITUTION**

When an offender is convicted of sexual assault of a minor in violation of Pen. Code § 11165.1(a) or (b), the court shall require as a condition of probation that the offender seek and maintain employment and apply a portion of his/her earnings as determined by the court to the payment of restitution for medical or psychological treatment expenses. Pen. Code 1203.1g. This provision also applies in cases where the offender is convicted of assault, battery, or assault with a deadly weapon on a victim 65 years of age or older. Pen. Code § 1203.1j. In the latter case, the offender must have known or reasonably should have known the victim was age 65 or older.

## **INTEREST**

An order of restitution imposed as a condition of probation may bear interest if the order exceeds \$50.00 and the court determines the offender has the ability to pay. The interest would be at a rate of 10% per annum and accrues from the date of the order on the outstanding principal amount. If the restitution is imposed in installments, the interest accrues from the date the installment comes due. Pen. Code § 1214.5.

## **DEFINITION OF VICTIM**

The court may order restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a **direct** victim of a crime. Pen. Code § 1202.4(p). Welf. & Inst. Code §§ 730.6(k) and 731.1(e).

## **COMMUNITY SERVICE IN LIEU OF FINES**

If the court imposes community service as an alternative to a fine, the court must specify the amount of fine, and the number of hours of community service in the order. Pen. Code § 1205.3. Further, this section applies to **all** fines, not just restitution fines.

Therefore, if the court elects to impose community service instead of a fine, it should do so for all fines. The court should not grant community service in place of a restitution fine while at the same time ordering the offender to pay other fines.

## **RESTITUTION LAWS EFFECTIVE SEPTEMBER 29, 1994 – AUGUST 2, 1995**

The laws in effect from September 29, 1994, through August 3, 1995 governing restitution fines and restitution orders to victims of crime were contained in Pen. Code §§1202.4 and 1203.04 (adult offenders), and Welf. & Inst. Code §§ 729.6, 730.6, and 731.1 (juvenile offenders). Analysis of these statutes is best illustrated by dividing this area into four possible scenarios as follows:

- I. Offender commits a felony and is denied probation**
- II. Offender commits a felony and is granted probation**
- III. Offender commits a misdemeanor and is denied probation**
- IV. Offender commits a misdemeanor and is granted probation**

### **I. OFFENDER COMMITS A FELONY AND IS DENIED PROBATION**

#### **No Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine of not less than \$200 and not more than \$10,000 for adult offenders (Pen. Code § 1202.4(b)) and not less than \$100 and not more than \$1,000 for juvenile offenders (Welf. & Inst. Code § 730.6(b)(1)).
- The minimum fine shall be ordered regardless of the offender's present ability to pay. Pen. Code § 1202.4(c) for adult offenders. Welf. & Inst. Code § 730.6(c) for juvenile offenders.
- In setting a fine in excess of the minimum, the offender shall bear the burden of demonstrating a lack of ability to pay. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(d)(2) for juvenile offenders.
- Consideration of an offender's ability to pay in excess of the minimum fine may include the offender's future earning capacity. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(d)(2) for juvenile offenders.
- Express findings by the court as to the factors bearing on the amount of the fine shall not be required Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(e) for juvenile offenders.

#### **Victim Suffers Economic Loss as a Result of the Offense:**

- The court shall impose a restitution fine in accordance with the above provisions.



- In lieu of imposing all or a portion of the restitution fine, the court must award restitution to the victim in the full amount of the economic loss. Pen. Code § 1202.4(f) for adult offenders. Welf. & Inst. Code 731.1(a)(2) for juvenile offenders committed to the Department of Youth Authority.
- The term "victim" shall include the immediate surviving family of the victim. Pen. Code § 1202.4(k) for adult offenders. Welf. & Inst. Code §§ 730.6(j) and 731.1(d) for juvenile offenders.
- For adult offenders convicted of a felony violation of Penal Code § 288, the court must award restitution to the victim in the amount of the economic loss, and may award restitution for non-economic losses such as psychological harm. Pen. Code § 1202.4(i).
- Adult restitution order payments shall be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Pen. Code § 1202.4(f).

#### **Waiver of Restitution Fine:**

- The restitution fine may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so and states these reasons on the record. Pen. Code § 1202.4(c) for adult offenders. Welf. & Inst. Code § 730.6(g) for juvenile offenders.

#### **Reduction/Waiver of Restitution Order to the Victim:**

- The restitution order can be less than the total amount of the victim's losses only if the court finds **clear and compelling** reasons for not ordering full restitution and states these reasons on the record. Pen. Code § 1202.4(g) for adult offenders. Welf. & Inst. Code §§ 730.6(h) and 731.1(b) for juvenile offenders.

## **II. OFFENDER COMMITS A FELONY AND IS GRANTED PROBATION**

#### **No Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine of not less than \$200 and not more than \$10,000 for adult offenders (Pen. Code § 1202.4(b)) and not less than \$100 and not more than \$1,000 for juvenile offenders (Welf. & Inst. Code § 730.6(b)(1)).
- The minimum fine shall be ordered regardless of the offender's present ability to pay. Pen. Code § 1202.4(c) for adult offenders. Welf. & Inst. Code § 730.6(c) for juvenile offenders.
- In setting a fine in excess of the minimum, the offender shall bear the burden of demonstrating a lack of ability to pay. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(d)(2) for juvenile offenders.

- Consideration of an offender's ability to pay in excess of the minimum fine may include the offender's future earning capacity. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(d)(2) for juvenile offenders.
- Express findings by the court as to the factors bearing on the amount of the fine shall not be required. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(e) for juvenile offenders.
- In addition to the restitution fine, if the crime does not involve a victim, the court must also order payment of restitution to the Restitution Fund as a condition of probation. Pen. Code § 1203.04(a)(2)(B) for adult offenders. Welf. & Inst. Code § 729.6 (a)(2)(b) for juvenile offenders.
- The amount of the restitution ordered to the Restitution Fund shall not be less than \$200 and shall not exceed \$10,000 for adult offenders. Pen. Code § 1203.04(f). The order shall not be less than \$100 and shall not exceed \$1,000 for juvenile offenders. Welf. & Inst. Code § 729.6(f).
- The offender's ability to pay shall be a factor in determining the amount of the restitution ordered to the Restitution Fund in excess of the minimum. Pen. Code § 1203.04(f) for adult offenders. Welf. & Inst. Code § 729.6(g)(1) for juvenile offenders.

#### **Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine in accordance with the above provisions.
- The court must award restitution to the victim as a condition of probation under Pen. Code § 1203.04(a)(2)(A) for adult offenders or Welf. & Inst. Code § 729.6(a)(2)(A) for juvenile offenders, in the full amount of the victim's economic losses including time spent as a witness or in assisting the police. Pen. Code §§ 1203.04(k) for adult offenders. Welf. & Inst. Code § 729.6(d) for juvenile offenders.
- The term "victim" shall include the immediate surviving family of the actual victim. Pen. Code §§ 1202.4(k) and 1203.04(h)(2) for adult offenders. Welf. & Inst. Code §§ 729.6(j) and 730.6(j) for juvenile offenders.
- Restitution order payments shall be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Pen. Code §§ 1202.4(f) and 1203.04(a)(2)(A) for adult offenders. Welf. & Inst. Code § 729.6(a)(2)(A) for juvenile offenders.

#### **Waiver of Restitution Order to the Victim:**

- Restitution orders may be waived only if the court finds **compelling and extraordinary** reasons to do so and states them on the record. Pen. Code § 1203.04(b) and (d) for adult offenders. Welf. & Inst. Code § 729.6(b) and (d) for juvenile offenders.

In lieu of the restitution order, the court must order community service as a condition of probation. Pen. Code § 1203.04(b) for adult offenders. Welf. & Inst. Code §§ 729.6(b) and 730.6(h) for juvenile offenders.

- The order to perform community service may be waived only if the court finds **compelling and extraordinary** reasons to do so and states them on the record in addition to its reasons for waiving restitution. Pen. Code § 1203.04(c) for adult offenders. Welf. & Inst. Code § 730.6(c) for juvenile offenders.

### **Waiver/Stay of the Restitution Fine**

- The court may waive the restitution fine only if there are **compelling and extraordinary** reasons and the court states these reasons on the record. Pen. Code § 1202.4(c) for adult offenders. Welf. & Inst. Code § 730.6(g) for juvenile offenders.
- The court may stay the restitution fine pending the successful completion of probation if the offender has been ordered to pay restitution as a condition of probation. The stay shall become permanent only upon successful completion of probation. Pen. Code § 1202.4(m) for adult offenders. Welf. & Inst. Code § 730.6(l) for juvenile offenders.

### **III. OFFENDER COMMITS A MISDEMEANOR AND IS DENIED PROBATION**

#### **No Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine of not less than \$100 and not more than \$1,000 for adult offenders (Pen. Code § 1202.4(b)) and not more than \$100 for juvenile offenders (Welf. & Inst. Code § 730.6(b)(2)).
  - For adult offenders, the minimum fine shall be ordered regardless of the offender's present ability to pay. Pen. Code § 1202.4(c). (Note: the minimum fine for juvenile offenders is zero).
  - In setting a fine in excess of the minimum, the offender shall bear the burden of demonstrating a lack of ability to pay. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(d)(2) for juvenile offenders.
  - Consideration of an offender's ability to pay in excess of the minimum fine may include the offender's future earning capacity. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code 730.6(d)(2) for juvenile offenders.
  - Express findings by the court as to the factors bearing on the amount of the fine shall not be required. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(e) for juvenile offenders.
- Victim Suffers Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine in accordance with the above provisions.

- In lieu of imposing all or a portion of the restitution fine, the court must award restitution to the victim in the full amount of the economic loss. Pen. Code § 1202.4(f) for adult offenders. Welf. & Inst. Code § 731.1(a)(2) for juvenile offenders committed to the Department of Youth Authority.
- The term "victim" shall include the immediate surviving family of the actual victim. Pen. Code § 1202.4(k) for adult offenders. Welf. & Inst. Code §§730.6(j) and 731.1(d) for juvenile offenders.
- Adult restitution order payments shall be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Pen. Code § 1202.4(f).

#### **Waiver of Restitution Fine:**

- The restitution fine may be waived only in instances where the court finds **compelling and extraordinary** reasons to do so and states these reasons on the record. Pen. Code § 1202.4(c) for adult offenders. Welf. & Inst. Code § 730.6(g) for juvenile offenders.

#### **Reduction/Waiver of Restitution Order to the Victim:**

- The restitution order can be less than the total amount of the victim's losses only if the court finds **clear and compelling** reasons for not ordering full restitution and states these reasons on the record. Pen. Code § 1202.4(g) for adult offenders. Welf. & Inst. Code §§ 730.6(h) and 731.1(b) for juvenile offenders.

### **IV. OFFENDER COMMITS A MISDEMEANOR AND IS GRANTED PROBATION**

#### **No Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine of not less than \$100 and not more than \$1,000 for adult offenders (Pen. Code § 1202.4(b)) and not more than \$100 for juvenile offenders (Welf. & Inst. Code § 730.6(b)).
- For adult offenders, the minimum fine shall be ordered regardless of the offender's present ability to pay. Pen. Code § 1202.4(c) for adult offenders. (Note: the minimum fine for juvenile offenders is zero).
- In setting a fine in excess of the minimum, the offender shall bear the burden of demonstrating a lack of ability to pay. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(d)(2) for juvenile offenders.
- Consideration of an offender's ability to pay in excess of the minimum fine may include the offender's future earning capacity. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(d)(2).

- Express findings by the court as to the factors bearing on the amount of the fine shall not be required. Pen. Code § 1202.4(d) for adult offenders. Welf. & Inst. Code § 730.6(e) for juvenile offenders.
- In addition to the restitution fine, if the crime does not involve a victim, the court must also order payment of restitution to the Restitution Fund as a condition of probation. Pen. Code § 1203.04(a)(2)(B) for adult offenders. Welf. & Inst. Code § 729.6(a)(2)(B) for juvenile offenders.
- The amount of the restitution ordered to the Restitution Fund shall not be less than \$100 and shall not exceed \$1,000 for adult offenders. Pen. Code § 1203.04(f). The order shall not exceed \$100 for juvenile offenders. Welf. & Inst. Code § 729.6(f).
- The offender's ability to pay shall be a factor in determining the amount of restitution ordered to the Restitution Fund in excess of the minimum. Pen. Code § 1203.04(f) for adult offenders. Welf. & Inst. Code § 729.6(g)(1) for juvenile offenders.

#### **Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine in accordance with the above provisions.
- The court must award restitution to the victim as a condition of probation under Pen. Code § 1203.04(a)(2)(A) for adult offenders or Welf. & Inst. Code § 729.6(a)(2) for juvenile offenders, in the full amount of the victim's economic losses, including time spent as a witness or in assisting the police. Pen. Code § 1203.04(d) for adult offenders. Welf. & Inst. Code § 729.6(d) for juvenile offenders.
- The term "victim" shall include the immediate surviving family of the actual victim. Pen. Code §§ 1202.4(k) and 1203.04(h)(2) for adult offenders. Welf. & Inst. §§ 729.6(j) and 730.6(j) for juvenile offenders.
- Restitution order payments shall be forwarded to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Pen. Code §§ 1202.4(f) and 1203.04(a)(2)(A) for adult offenders. Welf. & Inst. Code § 729.6(a)(2)(A) for juvenile offenders.

#### **Waiver/Stay of the Restitution Fine**

- The court may waive the restitution fine only if there are **compelling and extraordinary** reasons and the court states these reasons on the record. Pen. Code § 1202.4(c) for adult offenders. Welf. & Inst. Code § 730.6(g) for juvenile offenders.

- The court may stay the restitution fine pending the successful completion of probation if the offender has been ordered to pay restitution as a condition of probation. Pen. Code § 1202.4(m) for adult offenders. Welf. & Inst. Code § 730.6(l) for juvenile offenders. The stay shall become permanent only upon successful completion of probation.

#### **Waiver of Restitution Order to the Victim:**

- The restitution order (Pen. Code § 1203.04(a)(2)(A) or Welf. & Inst. Code §§ 729.6(a)(2)(A) and 730.6(a)(2)(B)) may be waived only if the court finds **compelling and extraordinary** reasons to do so and states them on the record. Pen. Code § 1203.04(b) and (d) for adult offenders. Welf. & Inst. Code § 729.6(b) and (d) for juvenile offenders. In lieu of the restitution order, the court must order community service as a condition of probation. Pen. Code § 1203.04(b) for adult offenders. Welf. & Inst. Code § 729.6(b) for juvenile offenders.
- The order to perform community service may be waived only if the court finds **compelling and extraordinary** reasons to do so and states them on the record in addition to its reasons for waiving restitution. Pen. Code § 1203.04(c) for adult offenders. Welf. & Inst. Code 730.6(c) for juvenile offenders.

# **RESTITUTION LAWS EFFECTIVE SEPTEMBER 29, 1994 – AUGUST 2, 1995**

## **ADDITIONAL RESTITUTION INFORMATION**

### **THE STATE OF CALIFORNIA'S LIEN RIGHTS ON RESTITUTION ORDERS**

When a victim has received assistance from the Victims of Crime Program and an order of restitution to the victim is imposed as part of the sentence, the order is payable to the Restitution Fund to the extent of the Victims of Crime Program assistance has provided assistance. Pen. Code § 1202.4(f) and § 1203.04(a)(2)(A) and Welf. & Inst. Code §§ 729.6(a)(2)(A) and 730.6. In addition, the State of California may have lien rights on the victim's recovery from the offender or a third party. Govt. Code § 13966.01.

An order of restitution should not be denied to a victim because he/she has received assistance from the Victims of Crime Program. To deny restitution for these reasons is to subsidize the offender's injury of the victim with money intended to assist victims.

### **RESTITUTION FINES AND ORDERS AS A CONDITION OF PROBATION**

If the court grants probation to the offender the court shall make payment of the restitution fine and order a condition of probation. Pen. Code § 1203.04(a)(2) for adult offenders. Welf. & Inst. Code § 729.6(a)(2) for juvenile offenders.

### **ABILITY TO STAY THE RESTITUTION FINE/ORDER**

In any case in which the offender is ordered to pay restitution to a victim or the Restitution Fund as a condition of probation, the court may stay the restitution fine imposed under Pen. Code § 1202.4(b) or Welfare & Institutions Code § 730.6(b) pending successful completion of probation. Pen. Code § 1202.4(m) for adult offenders. Welf. & Inst. Code § 730.6(l) for juvenile offenders.

Upon successful completion of probation, the stay shall become permanent (Pen. Code § 1202.4(b) for adults and Welf. & Inst. Code § 730.6(d) for juvenile offenders). Upon revocation of probation and imposition of sentence, the stay shall be lifted. Pen. Code § 1202.4(c) for adult offenders. Welf. & Inst. Code § 730.6(e) for juvenile offenders.

**PLEASE NOTE:** In order for the court to stay the restitution fine, there must exist an order to pay restitution as a condition of probation. Pen. Code § 1202.4(m) and Welf. & Inst. Code § 730.6(l). Otherwise, the restitution fine cannot be stayed.

## **RESTITUTION FINE FORMULA**

The Board of Control recommends the usage of the following formula in determining the appropriate restitution fine amount for those offenders sentenced to state prison:

$\$200 \text{ minimum restitution fine} \times \text{years of incarceration} \times \text{counts of conviction} =$   
restitution fine amount to be imposed (up to maximum of \$10,000)

## **RESTITUTION HEARINGS**

**Restitution Fine.** An offender is NOT entitled to a separate hearing on the amount of the restitution fine.

**Restitution Order.** In cases where an offender has been denied probation and ordered to pay restitution to the victim in lieu of the restitution fine, the offender is entitled to a hearing on the amount of an order of restitution to the victim. Pen. Code § 1202.4(j). In any case where an offender is ordered to pay restitution to the victim as a condition of probation, the offender is not entitled to a hearing.

**In order to be enforceable, a restitution fine or order must be specific. It must identify each victim and establish the amount of the obligation.**

## **LIFE OF A RESTITUTION FINE/ORDER - ENFORCEMENT**

**Restitution Fine.** Restitution fines imposed under Pen. Code § 1202.4(b) (formerly Govt. Code § 13967) are enforceable in the same manner as money judgments generally (Pen. Code § 1214(a)) and are not subject to the ten year limit for enforcement. Pen. Code § 1214(c).

Restitution fine amounts remaining unpaid at the end of the term of probation may be enforced in the same manner as a judgment in a civil action. Pen. Code § 1214.2(b)(2).

**Restitution Order.** An order of restitution to a victim under Pen. Code § 1202.4(f) (restitution in lieu of all or a portion of the restitution fine) is enforceable as a civil judgment. Pen. Code § 1202.4(h).

An order of restitution to a victim or the Restitution Fund as a condition of probation (Pen. Code § 1203.04(a)(2)(A)) shall constitute a civil judgment (Pen. Code § 1203.04(e)) and shall be enforceable in the same manner as any other money judgment. Pen. Code § 1214(b).



## **INTEREST**

An order of restitution as a condition of probation (Pen. Code § 1203.04) may bear interest if the order exceeds \$50.00 and the court determines the offender has the ability to pay. The interest would be at a rate of 10% per annum and accrue from the date of the order on the outstanding principal amount. If restitution is imposed in installments, the interest would accrue from the date the installment comes due. Pen. Code § 1214.5.

## **PLEA BARGAINS**

Offenders must be advised of the possible imposition of a restitution fine and restitution to the victim as a consequence of a plea bargain. A case that is plea bargained to a lesser charge is not excluded from the imposition of a restitution fine or order and does not constitute a "compelling and extraordinary reason" for waiver of either the fine or order.

## **WHERE TO OBTAIN VICTIM LOSS INFORMATION**

Victim loss information can be obtained from your local Victim/Witness Assistance Center, the Victims of Crime Program, or the Revenue Recovery and Compliance Division (RRCD) (for those victims who have filed claims for assistance). The telephone numbers of the RRCD analysts appear earlier in this document in the section entitled "Revenue Recovery and Compliance Division."

## **NON-PAYMENT OF A RESTITUTION FINE**

Non-payment of a restitution fine or order imposed as a condition of probation may be punished by either a modification of the conditions of probation or, if there is willful non-payment where there is an ability to pay, by revocation of probation. Pen. Code §§ 1203.1(j), 1203.2(a), and 1214.2(b)(1).

## RESTITUTION LAWS EFFECTIVE PRIOR TO SEPTEMBER 29, 1994

The statutes governing restitution fines and orders prior to 28, 1994 were Government Code §13967 and Pen. Code §§1202.4 and 1203.04 for adult offenders and Welfare and Institutions Code §§ 729.6, 730.6, and 731.1 for juvenile offenders. Analysis of these statutes are best illustrated by dividing this area into four possible scenarios as follows:

- I. Offender commits a felony and is denied probation
- II. Offender commits a felony and is granted probation
- III. Offender commits a misdemeanor and is denied probation
- IV. Offender commits a misdemeanor and is granted probation

### I. OFFENDER COMMITS A FELONY AND IS DENIED PROBATION

#### **No Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine of not less than \$200 and not more than \$10,000 for adult offenders (Gov. Code § 13967(a)) and not less than \$100 and not more than \$1,000 for juvenile offenders. Welf. & Inst. Code § 730.6(a).
- **Ability to Pay.** Penal Code § 1202.4 mandated that the court impose a restitution fine “as provided in subdivision (a) of Government Code section 13967, **regardless of the defendant’s present ability to pay.**” However, Government Code § 13967(a) required the court to impose a restitution fine of “not less than \$200, **subject to the defendant’s ability to pay,** and not more than \$10,000.” This statutory conflict resulted in a split of authority. Please refer to Restitution Case Law (Section 8.32) for relevant case law addressing the offender’s “ability to pay.” A similar ambiguity existed in the provisions governing juvenile offender restitution fines. Welf. & Inst. Code § 730.6(c).
- In setting the amount of the fine, the court shall consider any relevant factors, including but not limited to: the seriousness and gravity of the offense and the circumstances of its commission; any economic gain derived by the offender as a result of the crime; and the extent to which others suffered losses as a result of the crime. Gov. Code § 13967(a) for adult offenders. Welf. & Inst. Code § 730.6(b) for juvenile offenders.

#### **Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine in accordance with the above, subject to the following provisions:
- In lieu of imposing all or a portion of the restitution fine, the court shall order restitution to be paid to the victim. Gov. Code § 13967(c) for adult offenders.

- When a minor is committed to Youth Authority, in lieu of imposing all or a portion of the restitution fine, the court shall order restitution to be paid to the victim. Welf. & Inst. Code § 731.1(a) for juvenile offenders.
- For adult offenders convicted of a felony violation of Pen. Code § 288, the court may also order that restitution be paid to cover non-economic losses, including but not limited to psychological harm. Gov. Code § 13967(c) for adult offenders.

#### **Waiver of Restitution Fine:**

- The court may waive imposition of the restitution fine only in instances where the court finds that there are compelling and extraordinary reasons to do so, and states these reasons on the record. Pen. Code § 1202.4(a) for adult offenders. Welf. & Inst. Code § 730.6(c) for juvenile offenders.

#### **Reduction/Waiver of Restitution Order to the Victim:**

- A restitution order can be less than the total amount of the victim's losses only if the court finds clear and compelling reasons for not ordering full restitution and states these on the record. Gov. Code § 13967(c) for adult offenders.
- The court may waive imposition of restitution under Welf. & Inst. Code § 731.1(a) only if there are compelling and extraordinary reasons stated on the record. Welf. & Inst. Code § 731.1(c) for juvenile offenders.

## **II. OFFENDER COMMITS A FELONY AND IS GRANTED PROBATION**

#### **No Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine of not less than \$200 and not more than \$10,000 for adult offenders (Gov. Code § 13967(a)) and not less than \$100 and not more than \$1,000 for juvenile offenders. Welf. & Inst. Code § 730.6(a).
- **Ability to Pay.** Penal Code § 1202.4 mandated that the court impose a restitution fine “as provided in subdivision (a) of Government Code section 13967, **regardless of the defendant’s present ability to pay.**” However, Government Code § 13967(a) required the court to impose a restitution fine of “not less than \$200, **subject to the defendant’s ability to pay,** and not more than \$10,000.” This statutory conflict resulted in a split of authority. Please refer to Restitution Annotations (Section 8.32) for relevant case law addressing the offender’s “ability to pay.” A similar ambiguity existed in the provisions governing juvenile offender restitution fines. Welf. & Inst. Code § 730.6(c).

- In setting the amount of the fine, the court shall consider any relevant factors, including but not limited to: the seriousness and gravity of the offense and the circumstances of its commission; any economic gain derived by the offender as a result of the crime; and the extent to which others suffered losses as a result of the crime. Gov. Code § 13967(a) for adult offenders. Welf. & Inst. Code § 730.6(b) for juvenile offenders.
- In addition to the restitution fine, if the crime does not involve a victim, the court must also order payment of restitution to the Restitution Fund as a condition of probation. Pen. Code § 1203.04(a)(2) for adult offenders. Welf. & Inst. Code § 729.6(a)(2) for juvenile offenders.
- The amount of the restitution to be paid to the Restitution Fund shall be set at the discretion of the court and commensurate with the seriousness of the offense. The restitution shall not be less than \$200, and not exceed \$10,000 for adult offenders (Pen. Code § 1203.04(e)) and shall not be less than \$100 and not exceed \$1,000 for juvenile offenders. Welf. & Inst. Code 729.6(e).

#### **Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall order a restitution fine in accordance with the above provisions.
- The court must award restitution to the victim as a condition of probation. Pen. Code § 1203.04(a)(1) for adult offenders. Welf. & Inst. Code § 729.6(a)(1) for juvenile offenders.
- Payments shall be made to the Restitution Fund to the extent the victim has received assistance from the Victims of Crime Program. Pen. Code § 1203.04(a)(1) for adult offenders. Welf. & Inst. Code § 729.6(a)(1) for juvenile offenders.

#### **Waiver of Restitution Fine:**

- The court may waive the imposition of the restitution fine if there are compelling and extraordinary reasons that are stated on the record. Pen. Code § 1202.4(a) for adult offenders. Welf. & Inst. Code § 730.6(c) for juvenile offenders.

#### **Community Service In Lieu of Restitution Order:**

- If the court states on the record compelling and extraordinary reasons why restitution should not be required, the court shall order the offender to perform community service. Pen. Code § 1203.04(b) for adult offenders. Welf. & Inst. Code § 729.6(b) for juvenile offenders.
- The court may avoid imposing community service only if it finds and states on the record compelling and extraordinary reasons not to require community service in addition to its findings as to why restitution should not be imposed. Pen. Code § 1203.04(c) for adult offenders. Welf. & Inst. Code § 729.6(c) for juvenile offenders.

### **III. OFFENDER COMMITS A MISDEMEANOR AND IS DENIED PROBATION:**

There were no provisions for imposing restitution fines or orders when an offender committed a misdemeanor and was denied probation prior to September 29, 1994.

### **IV. OFFENDER COMMITS A MISDEMEANOR AND IS GRANTED PROBATION:**

#### **No Victim Suffered Economic Loss as a Result of the Offense:**

- The court shall require as a condition of probation that the offender pay restitution to the Restitution Fund. Pen. Code § 1203.04(a)(2) for adult offenders. Welf. & Inst. Code § 729.6(a)(2).
- Restitution ordered to the Restitution Fund shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not exceed \$1,000 for adult offenders (Pen. Code § 1203.04(e), and shall not exceed \$100 for juvenile offenders Welf. & Inst. § 729.6(e).

#### **Victims Suffers Economic Loss as a Result of the Offense:**

- The court shall require as a condition of probation that the offender make full or partial payment for the value of stolen or damaged property, medical expenses, and wages or profits lost due to injury or to time spent as a witness or in assisting the police or prosecution. Pen. Code § 1203.04(a)(1) for adult offenders. Welf. & Inst. Code § 729.6(a)(1) for juvenile offenders.

#### **Community Service In Lieu of Restitution Order to the Victim or Restitution Fund:**

- If the court states on the record compelling and extraordinary reasons why restitution should not be required, the court shall order the offender to perform community service. Pen. Code § 1203.04(b) for adult offenders. Welf. & Inst. Code § 729.6(b) for juvenile offenders.
- The court may avoid imposing community service only if it finds and states on the record compelling and extraordinary reasons not to require community service in addition to its findings as to why restitution should not be imposed. Pen. Code § 1203.04(c) for adult offenders. Welf. & Inst. Code § 729.6(c) for juvenile offenders.

## **RESTITUTION LAWS EFFECTIVE PRIOR TO SEPTEMBER 29, 1994**

### **ADDITIONAL RESTITUTION INFORMATION**

#### **THE STATE OF CALIFORNIA'S LIEN RIGHTS TO RESTITUTION ORDERS**

When a victim has received assistance from the Victims of Crime Program (VOCP) and an order of restitution to the victim is imposed as part of the sentence, payments shall be made to the Restitution Fund to the extent the victim has received assistance from the VOCP. Pen. Code § 1203.04(a)(1) for adult offenders. Welf. & Inst. Code § 729.6(a)(1). In addition, the State of California may have subrogation rights on the victim's recovery from the offender or third party. Govt. Code 13966(a).

An order of restitution should not be denied to a victim because he/she has received assistance from the VOCP. To deny restitution in these circumstances is to subsidize the offender's injury of the victim with monies intended to assist victims.

#### **ABILITY TO STAY RESTITUTION FINE**

In any case in which the offender is ordered to pay restitution to the victim or the Restitution Fund as a condition of probation, the court may stay the restitution fine imposed pending successful completion of probation. Penal Code § 1202.4(a) for adult offenders and Welf. & Inst. Code § 730.6 for juvenile offenders.

Upon successful completion of probation, the stay shall become permanent. Pen. Code § 1202.4(b) for adult offenders. Welf. & Inst. Code § 730.6(d) for juvenile offenders. Upon revocation of probation and imposition of sentence, the stay shall be lifted. Pen. Code § 1202.4(c) for adult offenders. Welf. & Inst. Code § 730.6(e) for juvenile offenders.

**PLEASE NOTE: In order for the court to stay the restitution fine, there must exist an order for the offender to pay restitution to the victim as a condition of probation. Otherwise, the fine cannot be stayed.**

#### **RESTITUTION HEARINGS**

**Restitution Order.** In cases where an adult defendant has been denied probation and ordered to pay restitution to a victim, the defendant shall have the right to a hearing before the judge to dispute the determination made regarding the amount of restitution. Govt. Code § 13967(c) for adult offenders.

## **LIFE OF A RESTITUTION/ORDER - ENFORCEMENT**

**Restitution fine.** Restitution fines imposed under Government Code § 13967 are enforceable in the same manner as money judgments generally (Pen. Code § 1214(a)), and are not subject to the ten year limit for enforcement (Pen. Code § 1214(c)). Restitution fines remaining unpaid at the end of the term of an adult offender's probation may be enforced in the same manner as a judgment in a civil action. Pen. Code § 1214.2(a)(2).

**Restitution Order.** An order of restitution to a victim under Government Code § 13967(c) or Welfare and Institutions Code § 731.1 (restitution in lieu of all or a portion of the restitution fine) is enforceable as a civil judgment. Gov. Code § 13967(c) for adult offenders. Welf. & Inst. Code § 731.1(b).

An order of restitution to a victim or the Restitution Fund as a condition of probation (Pen. Code 1203.04(1)(2)) shall constitute a civil judgment enforceable in the same manner as any other money judgment. Pen. Code § 1214(b).

## **WHERE TO OBTAIN VICTIM LOSS INFORMATION**

Victim loss information can be obtained from your local Victim/Witness Assistance Center, the VOCP, or the Revenue Recovery and Compliance Division (RRCD) (for those victims who have filed claims for assistance). The telephone numbers of the RRCD analysts appear earlier in this document in the section entitled "Revenue Recovery and Compliance Division".

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## Restitution Case Law – By Subject

### October 1998

<p>This Restitution Case Law Summary was compiled as of October 21, 1998 and is not intended to be all-inclusive. All case references should be checked prior to citation.</p>
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#### Ability to Pay

**Note:** *Effective September 29, 1994, statutes governing the imposition of restitution fines were amended to expressly state that minimum restitution fines and restitution orders are to be imposed regardless of an offender's ability to pay.*

Penal Code §1202.4(d) is construed to contain an implied rebuttable presumption, affecting the burden of proof, that a defendant has the ability to pay a restitution fine. The statute thus impliedly presumes a defendant has the ability to pay a restitution fine and places the burden on a defendant to prove lack of ability. The record need not contain evidence of defendant's ability to pay. *People v. Romero* (1996) 43 Cal.App.4th 440 [51 Cal.Rptr.2d 26].

Court may properly base restitution order on probation report. As long as defendant is given an opportunity to respond to any matter in the probation report regarding restitution, due process is satisfied. *People v. Campbell* (1994) 21 Cal.App.4th 825 [26 Cal.Rptr.2d 433].

Trial court is not required to make express finding of ability to pay before imposing restitution obligation upon defendant as condition of probation; statute prohibits court from revoking probation unless it determines that defendant has ability to pay, and therefore equal protection requirement that no one be incarcerated for lack of ability to pay is satisfied. *People v. Goulart* (1990) 224 Cal.App.3d 71 [273 Cal.Rptr. 477].

Penal Code §1202.4, providing that defendant's present ability to pay is irrelevant when determining amount of restitution fine, absent compelling and extraordinary reasons, does not violate due process. *People v. McGhee* (1988) 197 Cal.App.3d 710 [243 Cal.Rptr. 46].

In making an ability to pay determination the court may consider a defendant's future prison wages in their entirety as well as the possibility of employment upon defendant's release from prison. *People v. Gentry* (1994) 28 Cal.App.4th 1374 [34 Cal.Rptr.2d 37] review denied.

## **Abstract of Judgment – Recording Imposed Restitution**

A prosecutor's mission includes assuring that a correct lawful sentence is imposed. Prosecutors must explicitly request all particulars of appropriate relief at sentencing hearings, to monitor minute orders and abstracts of judgement to make sure that sentences are recorded accurately and completely, and where they are not, to request the trial court to correct erroneous orders. *People v. Parker* (1998) 1998 Cal.App. Lexis 856 [78 Cal.Rptr.2d 868] as modified October 26, 1998, (No. B119466).

An abstract of judgment must reflect the restitution fines imposed pursuant to Penal Code §1202.4 and §1202.45. If the abstract of judgement does not specify the amount of the restitution fine, then the Department of Corrections and the Youth Authority cannot fulfill their statutorily mandated responsibilities to collect sums due to the Restitution Fund. *People v. Hong* (1998) 64 Cal.App.4th 1071 [76 Cal.Rptr.2d 23].

On remand, upon imposition of appropriate restitution fines, the amended abstract of judgment must reflect the imposition of restitution fines imposed pursuant to Penal Code §1202.4(b) and §1202.45. *People v. Martinez* (1998) 65 Cal.App.4th 1511 [77 Cal.Rptr.2d 492].

The grant of power to the Judicial Council to prescribe the form of the abstract does not excuse a county clerk from recording the restitution fine on the document. *People v. Hong* (1998) 64 Cal.App.4th 1071 [76 Cal.Rptr.2d 23].

## **Amount of Restitution Fine**

A defendant who fails to object to the amount of a restitution fine recommended by probation waives any objection to the recommended amount. *People v. Douglas* (1995) 39 Cal.App.4th 1385 [46 Cal.Rptr.2d 534] review denied.

Defendant cannot object for the first time on appeal to the imposition of a restitution fine. *People v. Gibson* (1994) 27 Cal.App.4th 1466 [33 Cal.Rptr.2d 217] review denied.

A court need not give an explanation of its decision on the amount of a fine under Government Code §13967 (now Penal Code §1202.4). *People v. Menius* (1994) 25 Cal.App.4th 1290 [31 Cal.Rptr.2d 15].

When the circumstances of a particular case are such that imposition of the upper term of imprisonment for a particular crime is justified, a trial court does not abuse its discretion in imposing a maximum restitution fine. *People v. McGhee* (1988) 197 Cal.App.3d 710 [243 Cal.Rptr. 46].

Seriousness of the offense is only one of the relevant factors to be considered by the trial court in setting the amount of the fine. The trial court has broad discretion in deciding the amount of the fine to be imposed and need not provide a statement of reasons on the record. *People v. Griffin* (1987) 193 Cal.App.3d 739 [238 Cal.Rptr. 371].

Consideration of a defendant's criminal history when determining the amount of restitution fine is not abuse of discretion. *People v. Griffin* (1987) 193 Cal.App.3d 739 [238 Cal.Rptr. 371].

Superior courts are not required to state formal reasons on the record for imposing restitution fines. *People v. Romero* (1985) 167 Cal.App.3d 1148 [213 Cal.Rptr. 774].

A court's discretion to impose a fine within the range of minimum and maximum amounts is not a "sentencing choice" within the meaning of determinate sentencing for which reasons must be stated. Thus, determinate sentencing rules applicable to the superior court do not require a formal statement of reasons when restitution fines are imposed. *People v. Romero* (1985) 167 Cal.App.3d 1148 [213 Cal.Rptr. 774].

When defendant is ordered to pay both direct restitution and a restitution fine, he is entitled to a credit for the amount of direct restitution ordered. Thus, if the direct restitution ordered exceeds the restitution fine amount, the restitution fine is stricken. *People v. Farsight* (1998) 64 Cal.App.4th 1402 [75 Cal.Rptr.2d 858] review denied.

### **Amount of Restitution Order**

A defendant convicted of obtaining property by false pretenses was properly ordered to pay the victim restitution for the value of the property obtained, even though the victim's loss had been discharged in bankruptcy. *People v. Dalvito* (1997) 56 Cal.App.4th 557 [Cal.App.4th 557] review denied.

Court must determine the amount of a victim's loss on grounds that will withstand review for abuse of discretion. Court may use any rational method of fixing the amount of restitution that is reasonably calculated to make the victim whole. *People v. Ortiz* (1997) 53 Cal.App.4th 791 [62 Cal.Rptr.2d 66] review denied. (citing, *People v. Tucker* (1995) 37 Cal.App.4th 1, 6 [44 Cal.Rptr.2d 1] review denied.)

Court may properly base restitution order on probation report. *People v. Campbell* (1994) 21 Cal.App.4th 825 [26 Cal.Rptr.2d 433].

Imposition of restitution to victims pursuant to Government Code §13967(c), as it existed in 1989, was limited to \$10,000. It did not give court authority to order up to \$10,000 in restitution for each victim or for each count. *People v. McNeely* (1994) 28 Cal.App.4th 739 [33Cal.Rptr.2d 582] review denied.

Prosecution cannot waive or limit the victim's right to be reimbursed for economic losses resulting from the defendant's criminal conduct. Neither the trial court nor the prosecution has the authority to bargain away the victim's constitutional and statutory right to restitution. As such, it cannot properly be the subject of plea negotiations. *People v. Valdez* (1994) 24 Cal.App.4th 1194 [30 Cal.Rptr.2d 4].

A defendant who fails to object in the trial court to the amount of a restitution order recommended by probation waives any objection to the recommended amount. *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied.

Trial court erred in ordering defendant to pay restitution for the monetary value of the time victim spent on behalf of the sheriff's department making an accounting of the losses incurred as a result of defendant's embezzlement. *People v. Friscia* (1993) 18 Cal.App.4th 834 [22 Cal.Rptr.2d 656] review denied.

Trial court erred in failing to conduct a hearing to determine the amount of restitution. *People v. Parnell* (1993) 16 Cal.App.4th 862 [20 Cal.Rptr.2d 302] review denied.

Restitution orders for economic losses must specify more than a lump sum amount, they are to be supported by reference to a factual basis for the claim. *People v. Blankenship* (1989) 213 Cal.App.3d 992 [262 Cal.Rptr. 141] review denied.

Proof by preponderance of evidence was appropriate standard for proving defendant committed uncharged crimes for purpose of determining amount of restitution to be ordered. Reasonable doubt standard not mandated. *People v. Baumann* (1985) 176 Cal.App.3d 67 [222 Cal.Rptr. 32] review denied.

### **Appeal of Restitution Fines and Orders**

Omissions by the trial court in ordering or failing to order restitution, restitution fines, laboratory fees and penalty assessments, or in communicating its orders concerning these matters to the Department of Corrections will not be addressed at the appellate level where counsel have not first requested correction of the judgment and abstract in the trial court. *People v. Parker* (1998) 1998 Cal.App. Lexis 856 [78 Cal.Rptr.2d 868] as modified October 26, 1998, (No. B119466).

A prosecutor's mission includes assuring that a correct lawful sentence is imposed. Prosecutors must explicitly request all particulars of appropriate relief at sentencing hearings, to monitor minute orders and abstracts of judgement to make sure that sentences are recorded accurately and completely, and where they are not, to request the trial court to correct erroneous orders. *People v. Parker* (1998) 1998 Cal.App. Lexis 856 [78 Cal.Rptr.2d 868] as modified October 26, 1998, (No. B119466).

Increase in restitution fine upon retrial after successful appeal violates double jeopardy clause of state constitution. *People v. Thompson* (1998) 61 Cal.App.4th 1269 [71 Cal.Rptr.2d 586] review filed March 19, 1998.

Objection to restitution imposed is waived on appeal when defendant failed to request a restitution hearing and failed to object to restitution at trial level. *People v. Riccio* (1996) 42 Cal.App.4th 995 [50 Cal.Rptr.2d 52].

The court's allocation of restitution responsibility (joint and several restitution order in juvenile case) must be sustained unless it constitutes an abuse of discretion or rests upon a demonstrable error of law. *In re S.S.* (1995) Cal.App.4th 543 [43 Cal.Rptr.2d 768].

A defendant who fails to object to the amount of a restitution fine recommended by probation waives any objection to the recommended amount. *People v. Douglas* (1995) 39 Cal.App.4th 1385 [46 Cal.Rptr.2d 534] review denied.

Defendant should not be permitted to assert for the first time on appeal a procedural defect in imposition of a restitution fine. *People v. Gibson* (1994) 27 Cal.App.4th 1466 [33 Cal.Rptr.2d 217] review denied.

Defendant may challenge the validity of a restitution order for the first time on appeal if the sentencing court rejects the recommendations in the probation report regarding a restitution fine and summarily orders direct payment of restitution to the victim, absent a hearing or waiver of hearing. *People v. Resendez* (1993) 12 Cal.App.4th 98 [15 Cal.Rptr.2d 575].

Restitution order for economic losses must be supported by reference to a factual basis for the claim. *People v. Resendez* (1993) 12 Cal.App.4th 98 [15 Cal.Rptr.2d 575].

Where the issue concerns the identity and specificity of the losses involved, it is a purely factual issue that is susceptible of waiver. In failing to object on this ground at trial, defendant waived the issue on appeal. *People v. Zito* (1992) 8 Cal.App.4th 736 [10 Cal.Rptr.2d 491].

A trial court's failure to properly advise a defendant that restitution is a possible consequence of a guilty plea does not require relief unless the defendant objected to the restitution order at sentencing and can show prejudice as a result of the incomplete admonition. *People v. Nystrom* (1992) 7 Cal.App.4th 1177 [10 Cal.Rptr.2d 94] review denied.

A defendant who fails to object in the trial court to the amount of a restitution order recommended by probation waives any objection to the recommended amount. *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied.

Objection to restitution is waived if not raised at time judgment is pronounced. *In re John H.* (1992) 3 Cal.App.4th 1109 [6 Cal.Rptr.2d 25].

Objection to restitution fine on the basis of a failure to advise defendant of the fine before entering a negotiated guilty plea is waived if not raised at or before sentencing. If the error is timely raised, and the court finds it is reasonably probable the defendant would not have pleaded guilty if properly advised, the court must either reduce the fine to the statutory minimum of \$100 or allow the defendant to withdraw the plea. *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902].

Objection to restitution fine on the basis of the court's failure to advise defendant of the fine before entering a negotiated plea is error. If the restitution fine imposed significantly exceeds the terms of a negotiated plea, and the §1192.5 admonition is not given, the error is not waived by acquiescence and may not be deemed harmless. The trial court must either reduce the fine to \$100 or allow the defendant to withdraw the plea. *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902].

Objection to restitution fine on the basis of the court's failure to advise defendant of the fine before entering a guilty plea is error. If the error is raised after sentencing (i.e. on appeal), the proper remedy is generally to reduce the fine to the statutory minimum. *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902].

### **Bankruptcy**

A defendant convicted of obtaining property by false pretenses was properly ordered to pay the victim restitution for the value of the property obtained, even though the victim's loss had been discharged in bankruptcy. *People v. Dalvito* (1997) 56 Cal.App.4th 557 [Cal.App.4th 557] review denied.

State court can order the defendant in a criminal case to pay restitution to a victim whose civil claim against the defendant for the damage covered by the restitution order has been discharged in bankruptcy. *People v. Moser* (1996) 50 Cal.App.4th 130 [57 Cal.Rptr.2d 647].

Restitution orders, as part of state criminal sentences imposed upon conviction, are nondischargeable under 11 U.S.C. §523(a)(7) (U.S. Bankruptcy Code). *Steiger v. Clark County (In re Steiger)* (1993) 159 B.R. 907.

Restitution obligations imposed as conditions of probation in state criminal proceedings are not dischargeable in bankruptcy proceedings under Chapter 7 of the Bankruptcy Code. *Kelly v. Robinson* (1986) 479 U.S. 36 [107 S.Ct. 353]. \*Note: By statute, restitution debts are not dischargeable under Chapter 13 of the Bankruptcy code. See, 11 U.S.C. §1328(a)(3).

### **Collection from Inmates/Wards**

California Department of Corrections properly deducted percentage of inmate's wages and trust account deposits to go toward payment of restitution fine even though funds, once deposited into his trust account, were exempt from attachment, levy, or execution up to \$300 under exemption statute governing inmate trust accounts. The provisions of Penal Code §2085.5 and Code of Civil Procedure §704.090 are not in conflict. *In re Betts* (1998) 62 Cal.App.4th 821 [73 Cal.Rptr.2d 254] review denied.

An abstract of judgment must reflect the restitution fines imposed pursuant to Penal Code §1202.4 and §1202.45. If the abstract of judgement does not specify the amount of the restitution fine, then the Department of Corrections and the Youth Authority cannot fulfill their statutorily mandated responsibilities to collect sums due to the Restitution Fund. *People v. Hong* (1998) 64 Cal.App.4th 1071 [76 Cal.Rptr.2d 23].

## **Conditions of Probation**

Payment of restitution order for property damage as a condition of probation where defendant convicted of fleeing the scene of an accident is reasonably related to the offense underlying the conviction and is therefore within court's discretion. *People v. Carbajal* (1995) 10 Cal.4th 1114 [43 Cal.Rptr.2d 681].

Failure to pay restitution cannot serve as cause for revocation of probation without a finding of a willful failure to pay and a finding of an ability to pay. *People v. Whisenand* (1995) 37 Cal.App.4th 1383 [44 Cal.Rptr.2d 501] review denied, certiorari denied. (1996) 516 U.S. 1128 [116 S.Ct. 945].

Restitution order as a condition of probation on dismissed count is not a penal consequence of plea and therefore does not violate plea agreement. Harvey waiver allowed court to consider the dismissed count for purposes of restitution. *People v. Campbell* (1994) 21 Cal.App.4th 825 [26 Cal.Rptr.2d 433].

Imposing joint and several liability on co-defendants for restitution order as condition of probation pursuant to Penal Code § 1203.1 is permissible. *People v. Campbell* (1994) 21 Cal.App.4th 825 [26 Cal.Rptr.2d 433].

Insurance Company may be "victim" entitled to direct restitution as condition of probation, pursuant to Penal Code § 1203.1 and 1203.04. *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied.

Term of probation may be modified or extended when probationer fails to pay restitution as ordered because of an inability to pay. *People v. Cookson* (1991) 54 Cal.3d 1091 [2 Cal.Rptr.2d 176] [Note: modification and extension of probation for purposes of payment of restitution now expressly authorized by statute. Penal Code §1203.3(b)(4)].

The requirements of Penal Code §1191.1 (right of victims to attend sentencing proceedings and make statements), are mandatory with regard to a hearing to terminate restitution as condition of probation. While the victim is not considered a party to a criminal proceeding, he or she may assert his or her legitimate rights by the procedures available to parties. Thus, victims not notified of proceedings to terminate restitution as a condition of defendant's probation are required to exhaust their remedies in the trial courts before seeking relief in appellate courts. *Melisa J. v. Superior Court* (1987) 190 Cal.App.3d 476 [237 Cal.Rptr. 5] review denied.

Failure to pay restitution as a condition of probation must be willful in order to serve as basis for revocation of ward's probation. *In re Angel E.* (1986) 177 Cal.App.3d 415 [223 Cal.Rptr. 4].

Imposing as a condition of probation restitution of funds involved in a related criminal charge of which defendant was acquitted was permissible. *People v. Lent* (1975) 15 Cal.3d 481 [124 Cal.Rptr. 905].



## **Due Process**

Court may properly base restitution order on probation report. As long as defendant is given an opportunity to respond to any matter in the probation report regarding restitution, due process is satisfied. *People v. Campbell* (1994) 21 Cal.App.4th 825 [26 Cal.Rptr.2d 433].

Defendant may challenge the validity of a restitution order for the first time on appeal if the sentencing court rejects the recommendations in the probation report regarding a restitution fine and summarily orders direct payment of restitution to the victim, absent a hearing or waiver of hearing. *People v. Resendez* (1993) 12 Cal.App.4th 98 [15 Cal.Rptr.2d 575].

Defendant was not entitled to hearing before money seized from him was awarded to victim pursuant to valid restitution order. *People v. Nystrom* (1992) 7 Cal.App.4th 1177 [10 Cal.Rptr.2d 94] review denied.

A defendant's due process rights are protected when the probation report gives notice of the amount of restitution claimed and expected to be ordered under Government Code §13967 (now Penal Code §1202.4), and the defendant has an opportunity to challenge the figures in the probation report at the sentencing hearing. *People v. Blankenship* (1989) 213 Cal.App.3d 992 [262 Cal.Rptr. 141] review denied.

A defendant's due process rights are protected if he is given notice of the amount of restitution sought and an opportunity to contest that amount; the rigorous procedural safeguards required during the guilt phase are not required. *People v. Rivera* (1989) 212 Cal.App.3d 1153 [261 Cal.Rptr. 93].

Penal Code §1202.4, providing that a defendant's present ability to pay is irrelevant when imposing restitution fine, absent compelling and extraordinary reasons, does not violate due process. *People v. McGhee* (1988) 197 Cal.App.3d 710 [243 Cal.Rptr. 46].

Failure to consider a defendant's ability to pay restitution fine does not constitute a violation of due process. *People v. Long* (1985) 164 Cal.App.3d 820 [210 Cal.Rptr. 745].

Defendant was not entitled to jury trial as to proper amount of restitution to be made to embezzlement victim as condition of probation. *People v. Baumann* (1985) 176 Cal.App.3d 67 [222 Cal.Rptr. 32] review denied.

Defendant was not deprived of property without due process by requirement that she pay restitution for more than was involved in one count of embezzlement, to which she pleaded guilty, as condition of probation, where defendant pleaded guilty to one of six counts of embezzlement charged in exchange for dismissal of five remaining counts. *People v. Baumann* (1985) 176 Cal.App.3d 67 [222 Cal.Rptr. 32] review denied.

Trial court is required to grant a defendant's request for a hearing on the issue of restitution; however, the requisite hearing need not approximate the formality of a civil trial. *People v. Hartley* (1984) 163 Cal.App.3d 126 [209 Cal.Rptr. 131].

### **Economic Loss**

Restitution can be ordered for victim's medical expenses paid by victim's insurance carrier. Defendant should not receive a windfall and should not be allowed to avoid bearing the financial consequences of his criminal conduct merely because the victim had insurance covering his medical expenses. *People v. Sullivan* (1998) 61 Cal.App.4th 337 [71 Cal.Rptr.2d 440] review filed March 13, 1998.

Economic losses for purposes of restitution include out-of-pocket expenses for psychological medical treatment by attempted murder victim's mother. *People v. Sullivan* (1998) 61 Cal.App.4th 337 [71 Cal.Rptr.2d 440] review filed March 13, 1998.

Restitution to victim for contingency fee paid to his attorney for purposes of obtaining settlement from defendant's insurance carrier was not improper. *People v. Pinedo* (1998) 60 Cal.App.4th 1403 [71 Cal.Rptr.2d 151].

Out-of-pocket investigative expenses incurred by non-profit organization in assisting the police in the investigation and prosecution of the case constitute economic loss incurred as the result of the defendant's criminal conduct and were subject to restitution. *People v. Ortiz* (1997) 53 Cal.App.4th 791 [62 Cal.Rptr.2d 66] review denied.

Restitution can be ordered for victim's future medical expenses. *People v. Phelps* (1996) 41 Cal.App.4th 946 [48 Cal.Rptr.2d 855] review denied.

Trial court must order restitution where there is economic loss; but where the amount is indefinite at the time of sentencing, the trial court's order is not an enforceable order. The court may reserve jurisdiction as to the amount and subsequently enter an enforceable order specifying the amount of restitution. *People v. Guardado* (1996) 40 Cal.App.4th 757 [47 Cal.Rptr.2d 81] review denied.

Payment of restitution order for property damage as a condition of probation where defendant convicted of fleeing the scene of an accident is reasonably related to the offense underlying the conviction and is therefore within court's discretion. Defendant's intent at time property was damaged is irrelevant to the trial court's decision regarding restitution. *People v. Carbajal* (1995) 10 Cal.4th 1114 [43 Cal.Rptr.2d 681]. Note: Carbajal decision is to be retroactively applied. *People v. Appellate Department (Gonzales)* (1996) 50 Cal.App.4th 84 [57 Cal.Rptr.2d 559].

Actual losses may include compensation for the loss of use of embezzled funds by an award of interest from the time of the embezzlement to the restitution hearing. *People v. Whisenand* (1995) 37 Cal.App.4th 1383 [44 Cal.Rptr.2d 501] review denied, certiorari denied. (1996) 516 U.S. 1128 [116 S.Ct. 945].

Legal expenses incurred in preventing sale of defendant's home constitutes an economic loss incurred as a result of defendant's criminal conduct and are properly the subject of a restitution order. *People v. Lyon* (1996) 49 Cal.App.4th 1521 [57 Cal.Rptr.2d 415].

Legal fees and costs incurred by victim in opposing or resisting defense discovery in a criminal proceeding is not an economic loss incurred as a result of defendant's criminal conduct and may not be the subject of a restitution order. *People v. Lyon* (1996) 49 Cal.App.4th 1521 [57 Cal.Rptr.2d 415].

A restitution award for costs of vehicle repair that exceed the pretheft value of the property is improper. Restitution for the value of damaged but reparable property is limited to the lesser of: (1) The difference between (a) the market value of the property before the commission of the felony and (b) the market value afterwards; or (2) The reasonable cost of repairing the damaged property to the condition it was in prior to being damaged by the felony of which the defendant was convicted. *People v. Yanez* (1995) 38 Cal.App.4th 1622 [46 Cal.Rptr.2d 1] review denied.

Economic loss for purposes of restitution does not include monetary value of the time victim spent on behalf of the sheriff's department making an accounting of the losses incurred as a result of defendant's embezzlement. *People v. Friscia* (1993) 18 Cal.App.4th 834 [22 Cal.Rptr.2d 656] review denied.

Where the issue concerns the identity and specificity of the losses involved, it is a purely factual issue that is susceptible of waiver. In failing to object on this ground at trial, defendant waived the issue on appeal. *People v. Zito* (1992) 8 Cal.App.4th 736 [10 Cal.Rptr.2d 491].

Restitution award is not required to be reduced by amount that victim could have collected from insurance company if he had filed insurance claim. *People v. Nystrom* (1992) 7 Cal.App.4th 1177 [10 Cal.Rptr.2d 94] review denied.

Restitution order for losses incurred because victim had to close her business to testify in court is permissible. *People v. Nguyen* (1994) 23 Cal.App.4th 32 [28 Cal.Rptr.2d 140] review denied.

Absent unusual circumstances or a showing by the defendant to the contrary, the original cost of a stolen item may be treated as evidence of replacement cost for purposes of restitution. *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied.

A property owner's statements in the probation report about the value of her property should be accepted as prima facie evidence of value for purposes of restitution. *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied.

Trial court is not limited to imposing restitution for losses resulting from crimes of which defendant was convicted; court may also consider crimes which were charged but dismissed, uncharged crimes the existence of which was readily apparent from facts elicited at trial, or even charges of which defendant was acquitted, if justice requires they be considered. *People v. Goulart* (1990) 224 Cal.App.3d 71 [273 Cal.Rptr. 477].

The juvenile court is not required to determine what damages might be recoverable in a civil action but may instead use any rational method of fixing the amount of restitution which is reasonably calculated to make the victim whole and which is consistent with the purpose of rehabilitation. *In re Brian S.* (1989) 130 Cal.App.3d 523 [181 Cal.Rptr. 778].

Defendant bears the burden of proving the victim's restitution estimate exceeds the replacement cost of the stolen property. After a restitution hearing on the matter, the trial court must make an independent judicial determination of the amount of restitution the defendant shall be required to pay based on the available evidence of the replacement or repair cost of the stolen or damaged property. *People v. Hartley* (1984) 163 Cal.App.3d 126 [209 Cal.Rptr. 131].

### **Ex Post Facto**

Amendment of statute to permit deduction of direct restitution from prison wages not violative of ex post facto provisions of federal and state constitutions - revision was procedural only. *People v. White* (1997) 55 Cal.App.4th 914 [64 Cal.Rptr.2d 245].

Retroactive application of amendment to statute providing that payments shall be made to Restitution Fund to extent victim received governmental assistance is not violative of ex post facto prohibition. *People v. Kwolek* (1995) 40 Cal.App.4th 1521 [48 Cal.Rptr.2d 325].

Victim restitution becomes operative as a form of punishment for purposes of ex post facto considerations only where, in a specific procedural context, its imposition produces severe consequences or a serious effect. *People v. Young* (1995) 38 Cal.App.4th 560 [45 Cal.Rptr.2d 177] review denied.

Restitution fine qualifies as punishment for purposes of the prohibition against ex post facto laws. Retroactive application of statutory amendment increasing minimum restitution fine from \$100 to \$200 violates ex post facto clause. *People v. Saelee* (1995) 35 Cal.App.4th 27 [40 Cal.Rptr.2d 790] review denied.

Addition of "ability to pay" language in amended statute benefits defendant and may be applied retroactively pursuant to ex post facto clause. *People v. Saelee* (1995) 35 Cal.App.4th 27 [40 Cal.Rptr.2d 790] review denied. (note: "ability to pay" language was subsequently removed from the relevant statute).

Restitution constitutes "punishment" and therefore ex post facto prohibition was violated to extent that defendant was required to pay restitution under statute for crimes or losses that occurred before statute's effective date. *People v. Zito* (1992) 8 Cal.App.4th 736 [10 Cal.Rptr.2d 491] review denied.

Although the purpose of a restitution fine is not punitive, its consequences to the defendant are severe enough that it qualifies as punishment for the purpose of plea negotiations. *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902].

### **"Harvey Waivers"**

Restitution order as a condition of probation on dismissed count is not a penal consequence of plea and therefore does not violate plea agreement. Harvey waiver allowed court to consider the dismissed count for purposes of restitution. *People v. Campbell* (1994) 21 Cal.App.4th 825 [26 Cal.Rptr.2d 433].

Restitution ordered on dismissed counts is valid provided the plea under which payment of restitution is made a condition was "freely and voluntarily made, there is factual basis of the plea, and the plea and all conditions are approved by the court." *People v. Beck* (1993) 17 Cal.App.4th 209 [21 Cal.Rptr.2d 250] review denied.

Restitution fine must be stricken when not part of the plea bargain and defendant was not advised a fine could be imposed as a possible punishment before he entered his plea. Mere mention on Harvey waiver form, without oral advisement, is not sufficient advisement. *People v. Oberreuter* (1988) 204 Cal.App.3d 884 [251 Cal.Rptr. 522] review denied. [note: disapproved by *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902] (see "Appeal of Restitution Orders and Fines," above).

### **Increase of Restitution Fine on Resentencing**

In cases where the "Henderson" double jeopardy prohibition is otherwise applicable, the monetary portion of a sentence on remand from a successful appeal may not exceed the monetary portion of the sentence originally imposed, absent some express agreement by the defendant to the contrary. *People v. Jones* (1994) 24 Cal.App.4th 1780 [30 Cal.Rptr.2d 238] review denied. (referencing *People v. Henderson* (1963) 60 Cal.2d 482 [35 Cal.Rptr. 77].

### **Ineffective Assistance of Counsel**

Failure to object to restitution as condition of probation, without more, does not constitute ineffective assistance of counsel. *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied.

## **Insurance Companies**

Restitution to insurance company is proper. Once an insurance company has indemnified the victim of a crime, the insurance company stands in the shoes of the victim and is therefore entitled to restitution from the perpetrator of the crime. The insurance company is in essence the direct victim of defendant's criminal conduct. *People v. Birkett* (1997) 63 Cal.Rptr.2d 587, review granted Sept. 3, 1997.

Restitution order benefiting victim's insurance carrier is "unauthorized" sentence, defendant's objection to which may be raised for the first time on appeal. *People v. Sexton* (1995) 33 Cal.App.4th 64 [39 Cal.Rptr.2d 242].

Insurance Company is "indirect" victim of crime and not a proper beneficiary of a restitution order. However, result is not that defendant receives a windfall. The trial court may still order defendant to pay restitution to the victim and leave it to insurer and the insured victim to work out repayment under the terms of their insurance contract. Alternatively, the trial court may conclude it is appropriate to impose a restitution fine commensurate with the amount the insurance company paid the victim. *People v. Sexton* (1995) 33 Cal.App.4th 64 [39 Cal.Rptr.2d 242].

Insurance Company may be "victim" entitled to direct restitution as condition of probation, pursuant to Penal Code §§ 1203.1 and 1203.04. *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied, superseded by statute, as stated in *People v. Sexton* (1995) 33 Cal.App.4th 64 [39 Cal.Rptr.2d 242].

Workers' Compensation benefits paid to victim police officer not subject to restitution under Government Code §13967 (now Penal Code §1202.4). *People v. Franco* (1993) 19 Cal.App.4th 175 [23 Cal.Rptr.2d 475].

Restitution award is not required to be reduced by amount that victim could have collected from insurance company if he had filed insurance claim. *People v. Nystrom* (1992) 7 Cal.App.4th 1177 [10 Cal.Rptr.2d 94] review denied.

Insurance company was not a "victim" within the meaning of Government Code §13960(a), and the court therefore had no jurisdiction to award restitution to an insurance company under Government Code §13967 (now Penal Code §1202.4). *People v. Williams* (1989) 207 Cal.App.3d 1520 [255 Cal.Rptr. 778]; accord, *People v. Blankenship* (1989) 213 Cal.App.3d 992 [262 Cal.Rptr. 141] review denied.

Trial court did not err in allowing restitution to be paid to insurance company as a condition of probation, because the insurance company had to reimburse victim of defendant's crime for loss caused by defendant, and thus insurance company's loss was directly related to defendant's criminal conduct. *People v. Calhoun* (1983) 145 Cal.App.3d 568 [193 Cal.Rptr. 394], superseded by statute as stated in *People v. Sexton* (1995) 33 Cal.App.4th 64 [39 Cal.Rptr.2d 242].

Requiring defendant to pay reparations to various fire insurance companies as a condition of probation, pursuant to Penal Code §1203.1, was proper. *People v. Alexander* (1960) 182 Cal.App.2d 281 [6 Cal.Rptr. 153].

Fact that victim may have settled with appellant's insurance carrier prior to the sentencing hearing is irrelevant to the trial court's power to order restitution. Settlement is not civil "judgment" as contemplated in Penal Code §1203.04 (now Penal Code §1202.4). Statute does not authorize credit from a civil settlement to the amount payable pursuant to a restitution order in a criminal case. *People v. Clifton* (1985) 172 Cal. App.3d 1165 [219 Cal.Rptr. 904].

### **Joint and Several Liability for Restitution Obligations**

Court may hold co-defendants jointly and severally liable for restitution orders, regardless of whether or not they are sentenced at the same time by the same judge. *People v. Madrana* (1997) 55 Cal.App.4th 1044 [64 Cal.Rptr.2d 518] review denied.

The court's allocation of restitution responsibility (joint and several restitution order in juvenile case) must be sustained unless it constitutes an abuse of discretion or rests upon a demonstrable error of law. *In re S.S.* (1995) Cal.App.4th 543 [43 Cal.Rptr.2d 768].

Joint and several orders (imposed on co-defendants) for payment of restitution made pursuant to Government Code §13967 (now Penal Code §1202.4) are permissible. *People v. Arnold* (1994) 27 Cal.App.4th 1096 [33 Cal.Rptr.2d 35].

Imposing joint and several liability on co-defendants for restitution order as condition of probation pursuant to Penal Code §1203.1 is permissible. *People v. Campbell* (1994) 21 Cal.App.4th 825 [26 Cal.Rptr.2d 433].

A joint and several restitution order is permissible. *People v. Zito* (1992) 8 Cal.App.4th 736 [10 Cal.Rptr.2d 491]; *People v. Flores* (1961) 197 Cal.App.2d 611 [17 Cal.Rptr. 382].

### **Juvenile Offenders**

The court's allocation of restitution responsibility (joint and several restitution order in juvenile case) must be sustained unless it constitutes an abuse of discretion or rests upon a demonstrable error of law. *In re S.S.* (1995) Cal.App.4th 543 [43 Cal.Rptr.2d 768].

Objection to restitution is waived if not raised at time judgment is pronounced. *In re John H.* (1992) 3 Cal.App.4th 1109 [6 Cal.Rptr.2d 25].

The juvenile court is not required to determine what damages might be recoverable in a civil action but may instead use any rational method of fixing the amount of restitution which is reasonably calculated to make the victim whole and which is consistent with the purpose of rehabilitation. *In re Brian S.* (1989) 130 Cal.App.3d 523 [181 Cal.Rptr. 778].

Failure to pay restitution as a condition of probation must be willful in order to serve as basis for revocation of ward's probation. *In re Angel E.* (1986) 177 Cal.App.3d 415 [223 Cal.Rptr. 4].

### **Money Judgments**

Restitution fines, costs of probation and reimbursement of costs of counsel are, by statute made enforceable in the manner of money judgments. The statutes however, do not authorize the county actually to enter money judgments against defendants for these amounts but rather to execute upon the orders already entered. *People v. Hart* (1998) 65 Cal.App.4th 902 [76 Cal.Rptr.2d 837] mod. on reh'g. denied. 66 Cal.App.4th 231e.

Trial courts may not order entry of a money judgment with its accompanying interest for the fines, fees and costs ordered at sentencing as the Penal Code does not provide for accrual of interest on these fines, fees and costs. *People v. Hart* (1998) 65 Cal.App.4th 902 [76 Cal.Rptr.2d 837] mod. on reh'g. denied, 66 Cal.App.4th 231e.

### **Parole Restitution Fine**

Failure to impose the mandatory fine pursuant to §1202.45 is a jurisdictional error that can be raised for the first time on appeal by the Attorney General. *People v. Hong* (1998) 64 Cal.App.4th 1071 [76 Cal.Rptr.2d 23].

### **Plea Agreements**

Neither the trial court nor the prosecution has the authority to bargain away the victim's constitutional and statutory right to restitution. As such, it cannot properly be the subject of plea negotiations. *People v. Valdez* (1994) 24 Cal.App.4th 1194 [30 Cal.Rptr.2d 4].

Restitution is a direct consequence of the conviction for which a defendant must be advised. Failure to advise requires that the guilty plea be set aside if the error is prejudicial to accused. Upon timely objection at or before sentencing, the sentencing court must determine whether it is reasonably probable the defendant would have pleaded guilty if properly advised. *People v. Valdez* (1994) 24 Cal.App.4th 1194 [30 Cal.Rptr.2d 4].

Failure to order victim restitution as part of negotiated plea is error. *People v. Valdez* (1994) 24 Cal.App.4th 1194 [30 Cal.Rptr.2d 4].



Although the purpose of a restitution fine is not punitive, its consequences to the defendant are severe enough that it qualifies as punishment for purposes of plea agreements. Accordingly, the restitution fine should generally be considered in plea negotiations. *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902].

Objection to restitution fine on the basis of a failure to advise defendant of the fine before entering a negotiated guilty plea is waived if not raised at or before sentencing. If the error is timely raised, and the court finds it is reasonably probable the defendant would not have pleaded guilty if properly advised, the court must either reduce the fine to the statutory minimum of \$100 or allow the defendant to withdraw the plea. *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902].

Objection to restitution fine on the basis of the court's failure to advise defendant of the fine before entering a negotiated plea is error. If the restitution fine imposed significantly exceeds the terms of a negotiated plea, and the §1192.5 admonition is not given, the error is not waived by acquiescence and may not be deemed harmless. The trial court must either reduce the fine to \$100 or allow the defendant to withdraw the plea. *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902].

Objection to restitution fine on the basis of the court's failure to advise defendant of the fine before entering a guilty plea is error. If the error is raised after sentencing (i.e. on appeal), the proper remedy is generally to reduce the fine to the statutory minimum. *People v. Walker* (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902].

### **Revocation of Probation**

A restitution fine imposed at time probation is granted survives revocation of probation. A second restitution fine imposed upon revocation of probation is not authorized by statute. *People v. Chambers* (1998) 65 Cal.App.4th 819 [76 Cal.Rptr.2d 732].

Failure to pay restitution cannot serve as cause for revocation of probation without a finding of a willful failure to pay and a finding of an ability to pay. *People v. Whisenand* (1995) 37 Cal.App.4th 1383 [44 Cal.Rptr.2d 501] review denied, certiorari denied. (1996) 516 U.S. 1128 [116 S.Ct. 945].

Trial court has jurisdiction after revoking probation to modify a judgment to add an order of direct victim restitution where victim restitution was not part of the initial suspended sentence, but rather was a condition of probation. *People v. Young* (1995) 38 Cal.App.4th 560 [45 Cal.Rptr.2d 177] review denied.

Failure to pay restitution as a condition of probation must be willful in order to serve as basis for revocation of ward's probation. *In re Angel E.* (1986) 177 Cal.App.3d 415 [223 Cal.Rptr. 4].

## **“To Be Determined” Restitution Orders**

Trial court must order restitution where there is economic loss, but where the amount is indefinite at the time of sentencing, the trial court's order is not an enforceable order. The court may reserve jurisdiction as to the amount and subsequently enter an enforceable order specifying the amount of restitution. *People v. Guardado* (1996) 40 Cal.App.4th 757 [47 Cal.Rptr.2d 81] review denied.

## **Unauthorized Sentence**

Where trial court fails to impose a restitution order, without stating compelling and extraordinary reasons on the record, the sentence is invalid. *People v. Rowland* (1997) 51 Cal.App.4th 1745 [60 Cal.Rptr.2d 351] review denied.

Restitution order benefiting victim's insurance carrier is “unauthorized” sentence, defendant's objection to which may be raised for the first time on appeal. *People v. Sexton* (1995) 33 Cal.App.4th 64 [39 Cal.Rptr.2d 242].

Imposing a restitution fine in lieu of direct victim restitution violates Government. Code §13967. *People v. Valdez* (1994) 24 Cal.App.4th 1194 [30 Cal.Rptr.2d 4].

## **Victim Defined**

Law enforcement agency is not “direct victim” of crime when it expends funds to purchase illegal drugs as part of a criminal investigation. Therefore, such an agency is not entitled to restitution under Penal Code §1202.4 for monies spent for such drug buys. *People v. Torres* (1997) 59 Cal.App.4th 1 [68 Cal.Rptr.2d 644].

Non-profit association formed to combat tape piracy and obtain restitution on behalf of its members may stand as direct victim of crime for purposes of a restitution order. *People v. Ortiz* (1997) 53 Cal.App.4th 791 [62 Cal.Rptr.2d 66] review denied.

Restitution to insurance company is proper. Once an insurance company has indemnified the victim of a crime, the insurance company stands in the shoes of the victim and is therefore entitled to restitution from the perpetrator of the crime. The insurance company is in essence the direct victim of defendant's criminal conduct. *People v. Birkett* (1997) 63 Cal.Rptr.2d 587, review granted September 3, 1997.

Insurance company is “indirect” victim of crime and not a proper beneficiary of a restitution order. However, result is not that defendant receives a windfall. The trial court may still order defendant to pay restitution to the victim and leave it to insurer and the insured victim to work out repayment under the terms of their insurance contract. Alternatively, the trial court may conclude it is appropriate to impose a restitution fine commensurate with the amount the insurance company paid the victim. *People v. Sexton* (1995) 33 Cal.App.4th 64 [39 Cal.Rptr.2d 242].

A victim for purposes of Government Code §13967 (now Penal Code §1202.4) is a person who is the object of a crime. *People v. Valdez* (1994) 24 Cal.App.4th 1194 [30 Cal.Rptr.2d 4].

Trial court may not order the defendant to pay restitution to "indirect victims." *People v. Wardlow* (1991) 227 Cal.App.3d 360, [278 Cal.Rptr. 1]; *People v. Blankenship* (1989) 213 Cal.App.3d 992 [262 Cal.Rptr. 141] review denied.; *People v. Williams* (1989) 207 Cal.App.3d 1520 [255 Cal.Rptr. 778]; see also, *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied.

"Victim" as defined in Government Code §13960 (governing Victims of Crime Program) is not binding definition of "victim" for purposes of restitution orders pursuant to Government Code §13967 (now Penal Code §1202.4.) – no physical injury necessary. *People v. Broussard* (1993) 5 Cal.4th 1067 [22 Cal.Rptr. 278]; *People v. Crow* (1993) 6 Cal.4th 952 [26 Cal.Rptr.2d 1].

Legislature intended "victim," as used in Government Code §13967(c) (now Penal Code §1202.4) to include defrauded government agencies. *People v. Crow* (1993) 6 Cal.4th 952 [26 Cal.Rptr.2d 1].

Insurance company may be "victim" entitled to direct restitution as condition of probation, pursuant to Penal Code §1203.1 and §1203.04. *People v. Foster* (1993) 14 Cal.App.4th 939 [18 Cal.Rptr.2d 1] review denied, superseded by statute, as stated in *People v. Sexton* (1995) 33 Cal.App.4th 64 [39 Cal.Rptr.2d 242].

Workers' Compensation benefits paid to victim police officer not subject to restitution under Government Code §13967 (now Penal Code §1202.4). *People v. Franco* (1993) 19 Cal.App.4th 175 [23 Cal.Rptr.2d 475].

Insurance company was not a "victim" within the meaning of Government Code §13960(a), and the court therefore had no jurisdiction to award restitution to an insurance company under Government Code §13967 (now Penal Code §1202.4). *People v. Williams* (1989) 207 Cal.App.3d 1520 [255 Cal.Rptr. 778]; accord, *People v. Blankenship* (1989) 213 Cal.App.3d 992 [262 Cal.Rptr. 141] review denied.

Restitution is not necessarily limited to persons, and county may be considered "victim" of defendant's criminal activity within meaning of restitution provisions, even though not a direct victim. *People v. Narron* (1987) 192 Cal.App.3d 724, 237 Cal.Rptr. 693.

Trial court did not err in allowing restitution to be paid to insurance company as a condition of probation, because the insurance company had to reimburse victim of defendant's crime for loss caused by defendant, and thus insurance company's loss was directly related to defendant's criminal conduct. *People v. Calhoun* (1983) 145 Cal.App.3d 568 [193 Cal.Rptr. 394], superseded by statute as stated in *People v. Sexton* (1995) 33 Cal.App.4th 64 [39 Cal.Rptr.2d 242].

Requiring defendant to pay reparations to various fire insurance companies as a condition of probation, pursuant to Penal Code §1203.1, was proper. *People v. Alexander* (1960) 182 Cal.App.2d 281 [6 Cal.Rptr. 153].

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